

## CHAPTER 565. CONVEYANCES OF REAL PROPERTY

### REVISED STATUTES OF 1846

#### CHAPTER 65

#### CHAPTER 65. OF ALIENATION BY DEED, AND THE PROOF AND RECORDING OF CONVEYANCES, AND THE CANCELING OF MORTGAGES.

##### **565.1 Conveyance of land made by deed.**

Sec. 1. Conveyances of lands, or of any estate or interest therein, may be made by deed, signed and sealed by the person from whom the estate or interest is intended to pass, being of lawful age, or by his lawful agent or attorney, and acknowledged or proved and recorded as directed in this chapter, without any other act or ceremony whatever.

**History:** R.S. 1846, Ch. 65;—CL 1857, 2720;—CL 1871, 4203;—How. 5652;—CL 1897, 8956;—CL 1915, 11688;—CL 1929, 13278;—CL 1948, 565.1.

**Former law:** See Act of August 1805; Woodward Code, Secs. 87-90; Terr. Laws, vol. 1, 38; Cass Code, Terr. Laws, vol. 1, 146; Act of March 27, 1820, Terr. Laws, vol. 1, 516; Act of April 12, 1827; R.L. 1827, p. 258; R.L. 1833, p. 379; Terr. Laws, vol. 2, 361; R.S. 1838, p. 257 as amended by Act 115 of 1839, Sec. 19, p. 219, Act 108 of 1840, p. 166; Act 5 of 1843, p. 6.

##### **565.3 Quit claim deed; estate passed.**

Sec. 3. A deed of quit claim and release, of the form in common use, shall be sufficient to pass all the estate which the grantor could lawfully convey by a deed of bargain and sale.

**History:** R.S. 1846, Ch. 65;—CL 1857, 2722;—CL 1871, 4205;—How. 5653;—CL 1897, 8957;—CL 1915, 11689;—CL 1929, 13279;—CL 1948, 565.3.

##### **565.4 Conveyance of greater estate than possessed; effect.**

Sec. 4. A conveyance made by a tenant for life or years, purporting to grant a greater estate than he possessed or could lawfully convey, shall not work a forfeiture of his estate, but shall pass to the grantee all the estate which such tenant could lawfully convey.

**History:** R.S. 1846, Ch. 65;—CL 1857, 2723;—CL 1871, 4206;—How. 5654;—CL 1897, 8958;—CL 1915, 11690;—CL 1929, 13280;—CL 1948, 565.4.

##### **565.5 Covenants; implication in conveyance.**

Sec. 5. No covenant shall be implied in any conveyance of real estate, except oil and gas leases, whether such conveyance contain special covenants or not.

**History:** R.S. 1846, Ch. 65;—CL 1857, 2724;—CL 1871, 4207;—How. 5655;—CL 1897, 8959;—CL 1915, 11691;—Am. 1929, Act 168, Eff. Aug. 28, 1929;—CL 1929, 13281;—CL 1948, 565.5.

##### **565.6 Covenants; implication in mortgage.**

Sec. 6. No mortgage shall be construed as implying a covenant for the payment of the sum thereby intended to be secured; and where there shall be no express covenant for such payment contained in the mortgage, and no bond or other separate instrument to secure such payment, shall have been given, the remedies of the mortgagee shall be confined to the lands mentioned in the mortgage.

**History:** R.S. 1846, Ch. 65;—CL 1857, 2725;—CL 1871, 4208;—How. 5656;—CL 1897, 8960;—CL 1915, 11692;—CL 1929, 13282;—CL 1948, 565.6.

##### **565.7 Conveyance of land adversely possessed; validity.**

Sec. 7. No grant or conveyance of lands or interest therein, shall be void for the reason that, at the time of the execution thereof such lands shall be in the actual possession of another claiming adversely.

**History:** R.S. 1846, Ch. 65;—CL 1857, 2726;—CL 1871, 4209;—How. 5657;—CL 1897, 8961;—CL 1915, 11693;—CL 1929, 13283;—CL 1948, 565.7.

##### **565.8 Deeds; execution; witnesses; acknowledgment; endorsement; validity and legality of certain acknowledgments and recordations of deeds; recorded deed lacking 1 or more witnesses.**

Sec. 8. Deeds executed within this state of lands, or any interest in lands, shall be acknowledged before any judge, clerk of a court of record, or notary public within this state. The officer taking the acknowledgment shall endorse on the deed a certificate of the acknowledgment, and the true date of taking the acknowledgment, under his or her hand. Any deed that was acknowledged before any county clerk or clerk of

any circuit court, before September 18, 1903, and the acknowledgment of the deed, and, if recorded, the record of the deed, shall be as valid for all purposes so far as the acknowledgment and record are concerned, as if the deed had been acknowledged before any other officer named in this section, and the legality of the acknowledgment and record shall not be questioned in any court or place. If a deed has been recorded that lacks 1 or more witnesses and the deed has been of record for a period of 10 years or more, and is otherwise eligible to record, the record of the deed shall be effectual for all purposes of a legal record and the record of the deed or a transcript of the record may be given in evidence in all cases and the deed shall be as valid and effectual as if it had been duly executed in compliance with this section.

**History:** R.S. 1846, Ch. 65;—CL 1857, 2727;—CL 1871, 4210;—How. 5658;—CL 1897, 8962;—Am. 1903, Act 117, Eff. Sept. 15, 1903;—Am. 1905, Act 103, Imd. Eff. May 10, 1905;—CL 1915, 11694;—CL 1929, 13284;—Am. 1937, Act 162, Imd. Eff. July 9, 1937;—CL 1948, 565.8;—Am. 1980, Act 488, Imd. Eff. Jan. 21, 1981;—Am. 2002, Act 23, Imd. Eff. Mar. 4, 2002.

**Compiler's note:** Section 2 of Act 488 of 1980 provides: "This amendatory act shall not affect any instrument validly executed and acknowledged before the effective date of this amendatory act."

**Former law:** By the act of August 29, 1805, the clerk of every court was authorized to record all deeds and writings which were acknowledged or proved before such court, or any judge thereof, or any justice of the peace, or any notary public. If the party did not reside in Michigan the acknowledgment or proof was to be "before any court of law, or the mayor or any chief magistrate of any city, town, or corporation in which the party shall dwell, certified by such court, mayor, or magistrate, in the manner such acts are usually authenticated by them." Woodward Code, p. 52, Secs. 87 and 89; Cass Code, p. 45; Terr. Laws, vol. 1, p. 38. Act of Sept. 16, 1810; Terr. Laws, vol. 1, p. 189, authorizes justices of the peace to take acknowledgments. By the act of 1820, deeds were required to be signed and sealed by the parties, and acknowledged or proved by one or more of the subscribing witnesses thereto, before one of the judges of the supreme court, or one of the justices of any county court, a notary public, or justice of the peace. Code of 1820, p. 157; Terr. Laws, vol. 1, p. 516. Deeds executed in any other territory, state, or country, were required to be acknowledged or proved and certified according to the laws and usages of such territory, state, or country. The provisions of the act of 1820 were substantially re-enacted in 1827, and continued in force until August 31, 1838. Revision of 1827, p. 258, and 1833, p. 279; Terr. Laws, vol. 2, p. 361. By the R.S. 1838, p. 257, acknowledgments might be made "before any judge of any court of record, or before any notary public or justice of the peace within the state or of the United States, or in any foreign country, or before any minister or consul of the United States in any foreign country." And provision was made for proving deeds before a court of record, in case the grantor should die or depart from the state without having acknowledged the same. R.S. 1838, as amended by Act 115 of 1839, Sec. 17, p. 219, required two witnesses. R.S. 1838 required no witnesses to a deed. By Act 108 of 1840, p. 166, deeds might be acknowledged before a justice of the peace, judge of the circuit, district, or supreme courts of the state, or notary public, or master in chancery. If executed by a person residing in any other state or territory, the deed was required to be executed according to the laws of such state or territory. If executed by a person residing in a foreign country, it might be executed according to the laws of such country, and acknowledged before a minister plenipotentiary, consul, or charge d'affaires of the United States. This act was in force until repealed by the R.S. 1846. For acts respecting conveyances by the governor and judges, and by the mayor, recorder, and aldermen of Detroit, see Laws of 1834, p. 38; Act 47 of 1844, p. 60, as amended by Act 108 of 1846, p. 156; and Act 228 of 1850, p. 232.

### **565.9 Execution of deed in another state; governing law, acknowledgment.**

Sec. 9. If any such deed shall be executed in any other state, territory or district of the United States, such deed may be executed according to the laws of such state, territory or district, and the execution thereof may be acknowledged before any judge of a court of record, notary public, justice of the peace, master in chancery or other officer authorized by the laws of such state, territory or district to take the acknowledgment of deeds therein, or before any commissioner appointed by the governor of this state for such purpose.

**History:** R.S. 1846, Ch. 65;—CL 1857, 2728;—CL 1871, 4211;—How. 5659;—CL 1897, 8963;—CL 1915, 11695;—CL 1929, 13285;—CL 1948, 565.9.

**Former law:** See section 2 of Act 108 of 1840.

### **565.10 Execution of deed in another state; seal of officer, certificate; record of prior deeds as evidence.**

Sec. 10. In the cases provided for in the last preceding section unless the acknowledgment be taken before a commissioner appointed by the governor of this state for that purpose the officer taking such acknowledgment shall attach thereto the seal of his office, and if such acknowledgment be taken before a justice of the peace or other officer having no seal of office, such deed or other conveyance or instrument shall have attached thereto a certificate of the clerk or other proper certifying officer of a court of record of the county or district, or of the secretary of the state or territory within which such acknowledgment was taken under the seal of his office, that the person whose name is subscribed to the certificate of acknowledgment was, at the date thereof, such officer as he is therein represented to be, and that he believes the signature of such person to such certificate of acknowledgment to be genuine, and that the deed is executed and acknowledged according to the laws of such state, territory or district. Whenever any deed or other instrument affecting the title to land, executed, acknowledged and authenticated in accordance with this section and the last preceding section, has been heretofore recorded in the proper county, such record, or a certified transcript thereof shall be prima facie evidence of the due execution of such instrument to the same extent as if it had been authenticated as required by the statute in force at the time such instrument was recorded.

**History:** R.S. 1846, Ch. 65;—CL 1857, 2729;—CL 1871, 4212;—Am. 1875, Act 215, Eff. Aug. 3, 1875;—How. 5660;—Am. 1891, Act 112, Eff. Oct. 2, 1891;—Am. 1893, Act 137, Eff. Aug. 28, 1893;—CL 1897, 8964;—CL 1915, 11696;—CL 1929, 13286;—CL 1948, 565.10.

**Former law:** The earlier acts did not require any clerk's certificate. Such certificate first became necessary May 20, 1839. Amendatory Act 115 of 1839, Sec. 34, p. 219, to R.S. 1838, which took effect 30 days thereafter, provided that "no register of deeds shall record any deed executed out of this state, unless there shall be attached thereto the official certificate of the proper certifying officer, showing that the officer taking the acknowledgment of such deed is such officer as by his certificate of acknowledgment he purports to be, duly commissioned and qualified." Act 108 of 1840, p. 166, which took effect Apr. 1, 1840, required that when the deed was executed in any other state or territory it should have attached thereto a certificate of the proper county clerk, under the seal of his office, that such deed was executed according to the laws of such state or territory. Act 5 of 1843, p. 6, effective Feb. 15, 1843, required that when the deed was executed in any other state or territory it should have attached thereto a certificate of the clerk or proper certifying officer of any court of record in such state or territory, under the seal of his office, that such deed was executed and acknowledged according to the laws of such state or territory. This provision continued in force until R.S. 1846.

#### **565.11 Execution of deed in foreign country; governing law; acknowledgment; certificate, seal; validation of certain deeds; record as evidence.**

Sec. 11. If such deed be executed in any foreign country it may be executed according to the laws of such country, and the execution thereof may be acknowledged before any notary public therein or before any minister plenipotentiary, minister extraordinary, minister resident, charge d'affaires, commissioner, or consul of the United States, appointed to reside therein; which acknowledgment shall be certified thereon by the officer taking the same under his hand, and if taken before a notary public his seal of office shall be affixed to such certificate: Provided, That all deeds of land situated within this state, heretofore or hereafter made in any foreign country, and executed in the presence of 2 witnesses, who shall have subscribed their names to the same as such, and the execution thereof shall have been acknowledged by the persons executing the same before any 1 of the officers authorized by this section to take such acknowledgment, and such acknowledgment shall have been certified thereon, as above required, shall be deemed between the parties thereto and all parties claiming under or through them, as valid and effectual to convey the legal estate of the premises therein described; and whenever such deed has been recorded in the office of the register of deeds of the proper county such record shall be effectual for all purposes of a legal record, and the record of such deed, or a transcript thereof, may be given in evidence as in other cases: Provided, That nothing herein contained shall impair the rights of any person under a purchase heretofore made in good faith and on valuable consideration.

**History:** R.S. 1846, Ch. 65;—CL 1857, 2730;—CL 1871, 4213;—How. 5661;—Am. 1889, Act 217, Eff. Oct. 2, 1889;—Am. 1889, Act 248, Imd. Eff. July 3, 1889;—CL 1897, 8965;—CL 1915, 11697;—CL 1929, 13287;—CL 1948, 565.11.

#### **565.13 Conveyance by nonresident married person; effect; procedure.**

Sec. 13. When a married person not residing in this state joins with his or her spouse in a conveyance of real estate situated within this state, the conveyance shall have the same effect as if he or she were not married, and the acknowledgment or proof of the execution of the conveyance by him or her may be the same as if he or she were not married.

**History:** R.S. 1846, Ch. 65;—CL 1857, 2732;—CL 1871, 4215;—How. 5663;—CL 1897, 8968;—CL 1915, 11700;—CL 1929, 13288;—CL 1948, 565.13;—Am. 1983, Act 212, Imd. Eff. Nov. 11, 1983.

#### **565.14 Deed; failure to acknowledge; proof by witness of execution.**

Sec. 14. When any grantor shall die, or depart from, or reside out of this state, not having acknowledged his deed, the due execution thereof may be proved by any competent subscribing witness thereto, before any court of record in this state.

**History:** R.S. 1846, Ch. 65;—CL 1857, 2733;—CL 1871, 4216;—How. 5664;—CL 1897, 8969;—CL 1915, 11701;—CL 1929, 13289;—CL 1948, 565.14.

#### **565.15 Deed; failure to acknowledge; proof of handwriting where witnesses are unobtainable.**

Sec. 15. If all the subscribing witnesses to such deed shall also be dead or out of this state, the same may be proved before any court of record in this state, by proving the handwriting of the grantor, and of any subscribing witness thereto.

**History:** R.S. 1846, Ch. 65;—CL 1857, 2734;—CL 1871, 4217;—How. 5665;—CL 1897, 8970;—CL 1915, 11702;—CL 1929, 13290;—CL 1948, 565.15.

#### **565.16 Deed; refusal to acknowledge; application to circuit court; summons to grantor.**

Sec. 16. If any grantor residing in this state shall refuse to acknowledge his or her deed, the grantee or any person claiming under him or her may apply to the circuit court in the county where the land lies, or where the grantor or any subscribing witness to the deed resides, which shall issue a summons to the grantor to appear at a certain time and place before the court, to hear the testimony of the subscribing witnesses to the deed; and the summons with a copy of the deed annexed shall be served at least 7 days before the time therein assigned for proving the deed.

**History:** R.S. 1846, Ch. 65;—CL 1857, 2735;—CL 1871, 4218;—How. 5666;—CL 1897, 8971;—CL 1915, 11703;—CL 1929, 13291;—CL 1948, 565.16;—Am. 1991, Act 149, Imd. Eff. Nov. 25, 1991.

#### **565.17 Deed; proof of execution; certificate of court.**

Sec. 17. At the time mentioned in the summons, or at any time to which the hearing may be adjourned, the due execution of the deed may be proved by the testimony of 1 or more of the subscribing witnesses; and if proved to the satisfaction of the court, it shall certify the same, and in the certificate he or she shall note the presence or absence of the grantor, as the fact may be.

**History:** R.S. 1846, Ch. 65;—CL 1857, 2736;—CL 1871, 4219;—How. 5667;—CL 1897, 8972;—CL 1915, 11704;—CL 1929, 13292;—CL 1948, 565.17;—Am. 1991, Act 149, Imd. Eff. Nov. 25, 1991.

#### **565.18 Deed; refusal to acknowledge; proof of execution by proving handwriting.**

Sec. 18. If any grantor residing in this state shall refuse to acknowledge his deed, and the subscribing witnesses thereto shall all be dead, or out of the state, it may be proved before any court of record in this state, by proving the handwriting of the grantor, or of any subscribing witness; the said court first summoning the grantor for the purpose, in the manner before provided in this chapter.

**History:** R.S. 1846, Ch. 65;—CL 1857, 2737;—CL 1871, 4220;—How. 5668;—CL 1897, 8973;—CL 1915, 11705;—CL 1929, 13293;—CL 1948, 565.18.

#### **565.19 Subscribing witnesses; subpoenas for attendance.**

Sec. 19. The court before whom any deed may be presented to be proved, as provided by this act, may issue subpoenas to the subscribing witnesses or others, as the case may require, to appear and testify touching the execution of the deed. The subpoenas may be served in any part of this state.

**History:** R.S. 1846, Ch. 65;—CL 1857, 2738;—CL 1871, 4221;—How. 5669;—CL 1897, 8974;—CL 1915, 11706;—CL 1929, 13294;—CL 1948, 565.19;—Am. 1991, Act 149, Imd. Eff. Nov. 25, 1991.

#### **565.20 Subscribing witnesses; refusal to appear or testify; civil liability; contempt; penalty.**

Sec. 20. Every person who being served with a subpoena under this act, shall without reasonable cause, refuse or neglect to appear, or appearing shall refuse to answer on oath, shall be liable to the injured party in the sum of 100 dollars damages, and for further damages as the party may sustain, and may also be committed to prison for contempt by the court who issued the subpoena, there to remain until he or she shall submit to answer upon oath.

**History:** R.S. 1846, Ch. 65;—CL 1857, 2739;—CL 1871, 4222;—How. 5670;—CL 1897, 8975;—CL 1915, 11707;—CL 1929, 13295;—CL 1948, 565.20;—Am. 1991, Act 149, Imd. Eff. Nov. 25, 1991.

#### **565.21 Unacknowledged deed; filing of copy by person interested; effect.**

Sec. 21. A person interested in a deed that is not acknowledged may at any time before or during an application to the circuit court file in the office of the register of deeds of the county where the lands are situated, a copy of the deed compared with the original by the register, which shall in the case of proceedings before a court of record, for the space of 10 days after the first day of the next term of the court, have the same effect as the recording of the deed, if the deed shall, within that time be duly proved and recorded.

**History:** R.S. 1846, Ch. 65;—CL 1857, 2740;—CL 1871, 4223;—How. 5671;—CL 1897, 8976;—CL 1915, 11708;—CL 1929, 13296;—CL 1948, 565.21;—Am. 1991, Act 149, Imd. Eff. Nov. 25, 1991.

#### **565.22 Unacknowledged deed; effect of filing; continuation.**

Sec. 22. If at the expiration of the time mentioned in the preceding section for that purpose, the proceedings for proving the execution of the deed shall be pending before the circuit court, the effect of filing such copy shall continue until the expiration of 7 days after the termination of the proceedings, if such deed shall within that time be duly proved and recorded.

**History:** R.S. 1846, Ch. 65;—CL 1857, 2741;—CL 1871, 4224;—How. 5672;—CL 1897, 8977;—CL 1915, 11709;—CL 1929, 13297;—CL 1948, 565.22;—Am. 1991, Act 149, Imd. Eff. Nov. 25, 1991.

### **565.23 Certificate of acknowledgment or proof of execution; effect on right to have deed recorded.**

Sec. 23. A certificate of the acknowledgment of any deed, or of the proof of the execution thereof before a court of record, signed by the clerk of such court before whom the same was taken, as provided in this chapter, and, in the cases where the same is necessary, the certificate required by section 11 of this chapter shall entitle the deed with the certificate or certificates to be recorded in the office of the register of deeds of the county where the lands lie.

**History:** R.S. 1846, Ch. 65;—CL 1857, 2742;—CL 1871, 4225;—How. 5673;—CL 1897, 8978;—CL 1915, 11710;—CL 1929, 13298;—CL 1948, 565.23;—Am. 1991, Act 149, Imd. Eff. Nov. 25, 1991.

**Former law:** From 1805 to 1815, deeds might be recorded in the office of any clerk of a court. Woodward Code, p. 52, sec. 87; Act of Aug. 29, 1805, Terr. Laws, vol. 1, p. 38; Act of Jan. 19, 1811, Terr. Laws, vol. 1, p. 162. The act of Nov. 4, 1815 required them to be recorded in the office of the register of probate of the district in which the lands were situate. Cass Code, p. 80; Terr. Laws, vol. 1, p. 176. See also Act of July 27, 1818, Terr. Laws, vol. 2, p. 140. By the act of Mar. 27, 1820 deeds were to be recorded in the office of the register of probate for the county, or register of the city, in which the lands were situate. Code of 1820, p. 157; Terr. Laws, vol. 1, p. 517. And see the Act of 1827, Rev. Laws of 1827, p. 258; Rev. Laws of 1833, p. 279; Terr. Laws, vol. 2, p. 261. See *Starkweather v. Martin*, 28 Mich. 477. The office of register of probate was abolished by the act of Jan. 29, 1835, and deeds, except of lands in Detroit, were required to be recorded in the office of the register of deeds elected for each county. Laws of 1835, p. 79; Terr. Laws, vol. 3, p. 1360. See also R.S. 1838, p. 260, Sec. 20; Amendatory Act 115 of 1839, Sec. 19, p. 219, to R.S. 1838; Act 108 of 1840, p. 167. As to recording in Detroit, see Act of July 28, 1818, Terr. Laws, vol. 2, p. 141; Act of Mar. 27, 1820; Terr. Laws, vol. 1, p. 518; Act of Apr. 12, 1827; Terr. Laws, vol. 2, p. 362; Rev. Laws of 1827, p. 259, of 1833, p. 280; Act of July 14, 1830, Rev. Laws of 1833, p. 282. See Laws of 1834, p. 38. The office of city register of Detroit was abolished by Act 115 of 1837, p. 268 and his duties conferred upon the register of deeds for the county of Wayne. Act 116 of 1837, p. 268. See Act 47 of 1844, p. 60, as amended by Act 108 of 1846, p. 156; Act 228 of 1850, p. 232.

### **565.24 Entry books; kept by register of deeds; form, consolidation.**

Sec. 24. Every register of deeds shall keep an entry book of deeds and an entry book of mortgages, each page of which shall be divided into 6 columns, with title or heads to the respective columns, in the following form, to-wit:

Date of Reception	Grantors	Grantees	Township where the land lies	To whom delivered (after being recorded) and date (of delivery.)	Fee (Fees) Received.
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Town.Range.Section.

He shall also keep a reception book of levies.

Where it is found desirable to consolidate reception book entries into 1 book, it may be done by providing a sheet divided into 9 vertical columns with title or heading to the respective columns in the following form:

RECEIPT NUMBER	DATE OF MONTH, DAY, HOUR.	GRANTORS OR MORTGAGORS OR DEFENDANTS	GRANTEES OR MORTGAGEES OR PLAINTIFFS	LOCATION OF LAND TOWN, RANGE, SECTION.	KIND OF INSTRUMENT	TO WHOM DELIVERED	DATE MAILED	FEE RECEIVED
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COLUMN  
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TIVE  
ENTRY  
NUMBERS.

THIS  
COLUMN  
WOULD  
CONTAIN  
ALL  
STATUTORY  
FEES  
CHARGED

**History:** R.S. 1846, Ch. 65;—CL 1857, 2743;—CL 1871, 4226;—Am. 1879, Act 262, Eff. Aug. 30, 1879;—How. 5674;—CL 1897, 8979;—CL 1915, 11711;—CL 1929, 13299;—Am. 1941, Act 263, Eff. Jan. 10, 1942;—CL 1948, 565.24.

### **565.25 Entry books; effect of entry by register of deeds; perfecting recording; applicability of subsection (2); time and notice of recording; prohibited acts; penalties.**

Sec. 25. (1) In the entry book of deeds, the register shall enter all deeds of conveyance absolute in their terms, and not intended as mortgages or securities, and all copies left as cautions. In the entry book of mortgages the register shall enter all mortgages and other deeds intended as securities, and all assignments of any mortgages or securities. In the entry book of levies the register shall enter all levies, attachments, liens, notices of lis pendens, sheriffs' certificates of sale, United States marshals' certificates of sale, other



instruments of encumbrances, and documentation required under subsection (2), noting in the books, the day, hour, and minute of receipt, and other particulars, in the appropriate columns in the order in which the instruments are respectively received.

(2) Except as otherwise provided in subsection (3), the recording of a levy, attachment, lien, lis pendens, sheriff's certificate, marshal's certificate, or other instrument of encumbrance does not perfect the instrument of encumbrance unless both of the following are found by a court of competent jurisdiction to have accompanied the instrument when it was presented to the register for entry:

(a) A full and fair accounting of the facts that support recording of the instrument of encumbrance and supporting documentation, as available.

(b) Proof of service that actual notice has been given to the recorded landowner of the land to which the instrument of encumbrance applies.

(3) Subsection (2) does not apply to any of the following:

(a) A tax lien that is not required to be recorded pursuant to the general property tax act, Act No. 206 of the Public Acts of 1893, being sections 211.1 to 211.157 of the Michigan Compiled Laws.

(b) The filing of an instrument of encumbrance authorized by state statute or federal statute.

(c) The filing of a consensual agreement to encumber real property entered into between the owner of real property and the person who seeks to record an encumbrance. A consensual agreement includes but is not limited to a mortgage, loan agreement, land contract, or other consensual or contractual agreement of whatever description entered into between the owner of real property and the person who seeks to record an encumbrance.

(d) The filing of an encumbrance authorized in a final order by a court of competent jurisdiction.

(e) A filing of a levy, attachment, lien, lis pendens, sheriff's certificate, marshal's certificate, or other instrument of encumbrance by a commercial lending institution. As used in this section, "commercial lending institution" means any of the following:

(i) A state or nationally chartered bank.

(ii) A state or federally chartered savings and loan association or savings bank.

(iii) A state or federally chartered credit union.

(iv) Any other state or federally chartered lending institution or regulated affiliate or regulated subsidiary of any entity listed in this subparagraph or subparagraphs (i) to (iii).

(v) An insurance company authorized to do business in this state pursuant to the insurance code of 1956, Act No. 218 of the Public Acts of 1956, being sections 500.100 to 500.8302 of the Michigan Compiled Laws.

(vi) A motor vehicle finance company subject to the motor vehicle sales finance act, Act No. 27 of the Public Acts of the Extra Session of 1950, being sections 492.101 to 492.141 of the Michigan Compiled Laws, with net assets in excess of \$50,000,000.00.

(vii) A foreign bank.

(viii) A retirement fund regulated pursuant to state law, or a pension fund of a local unit of government or a pension fund regulated pursuant to federal law with net assets in excess of \$50,000,000.00.

(ix) A federal, state, or local agency authorized by law to hold a security interest in real property or a local unit of government holding a reversionary interest in real property.

(x) A nonprofit tax exempt organization created to promote economic development in which a majority of the organization's assets are held by a local unit of government.

(xi) An entity within the federally chartered farm credit system.

(xii) A licensee under the mortgage brokers, lenders, and servicers licensing act, Act No. 173 of the Public Acts of 1987, being sections 445.1651 to 445.1684 of the Michigan Compiled Laws.

(xiii) A holder under the home improvement finance act, Act No. 332 of the Public Acts of 1965, being sections 445.1101 to 445.1431 of the Michigan Compiled Laws.

(xiv) A retail seller under the retail installment sales act, Act No. 224 of the Public Acts of 1966, being sections 445.851 to 445.873 of the Michigan Compiled Laws.

(xv) A licensee under Act No. 125 of the Public Acts of 1981, being sections 493.51 to 493.81 of the Michigan Compiled Laws, pertaining to secondary mortgages.

(xvi) A licensee under the consumer financial services act, Act No. 161 of the Public Acts of 1988, being sections 487.2051 to 487.2072 of the Michigan Compiled Laws.

(xvii) A licensee under the regulatory loan act of 1963, Act No. 21 of the Public Acts of 1939, being sections 493.1 to 493.26 of the Michigan Compiled Laws.

(xviii) A regulated lender under the credit reform act, Act No. 162 of the Public Acts of 1995, being sections 445.1851 to 445.1864 of the Michigan Compiled Laws.

(4) The instrument shall be considered as recorded at the time so noted and shall be notice to all persons except the recorded landowner subject to subsection (2), of the liens, rights, and interests acquired by or

involved in the proceedings. All subsequent owners or encumbrances shall take subject to the perfected liens, rights, or interests.

(5) A person who is not exempt under subsection (3) who encumbers property through the recording of a document listed under subsection (2) without lawful cause with the intent to harass or intimidate any person is liable for the penalties set forth in section 2907a of the revised judicature act of 1961, Act No. 236 of the Public Acts of 1961, being section 600.2907a of the Michigan Compiled Laws.

**History:** R.S. 1846, Ch. 65;—CL 1857, 2744;—CL 1871, 4227;—Am. 1879, Act 262, Eff. Aug. 30, 1879;—How. 5675;—CL 1897, 8980;—CL 1915, 11712;—CL 1929, 13300;—CL 1948, 565.25;—Am. 1958, Act 74, Eff. Sept. 13, 1958;—Am. 1996, Act 526, Eff. Mar. 31, 1997.

#### **565.26 Deeds and mortgages; different sets of books.**

Sec. 26. Different sets of books shall be provided by each register of deeds for the recording of deeds and mortgages. In 1 set, deeds required by section 25 to be entered in the entry book of deeds shall be recorded at full length, with the certificates of acknowledgment or proof of the execution of the deeds. In the other set, instruments required to be entered in the entry book of mortgages shall be recorded in like manner. However, a register of deeds who uses a medium pursuant to the records media act as a method of recording may combine all reproductions of instruments into 1 set of numbered books (libers), giving to each page a number. The set of books shall be called:

..... Register of Deeds Records.  
Name of county

**History:** R.S. 1846, Ch. 65;—CL 1857, 2745;—CL 1871, 4228;—How. 5676;—CL 1897, 8981;—CL 1915, 11713;—CL 1929, 13301;—Am. 1941, Act 263, Eff. Jan. 10, 1942;—CL 1948, 565.26;—Am. 1992, Act 212, Imd. Eff. Oct. 5, 1992.

#### **565.27 Certificate on recorded instruments; contents.**

Sec. 27. The register shall certify upon every instrument recorded by him, the time when it was received, and a reference to the book and page where it is recorded.

**History:** R.S. 1846, Ch. 65;—CL 1857, 2746;—CL 1871, 4229;—How. 5681;—CL 1897, 8986;—CL 1915, 11719;—CL 1929, 13302;—CL 1948, 565.27.

#### **565.28 General index and separate indexes; contents; computerization; securing computerized and primary indexes.**

Sec. 28. (1) Each register of deeds shall keep a proper general index to each set of books in which he or she shall enter alphabetically the name of each party to each instrument recorded by the register of deeds, with a reference to the book and page where the instrument is recorded. In a county in which reproductions pursuant to the records media act are combined in 1 set of books, the register of deeds shall keep separate indexes of the instruments. The register of deeds shall also keep a separate index in which shall be entered daily a minute of all discharges of mortgages as the discharges are entered, whether by written discharge or entered upon the margin of the record, together with a reference to the volume and page where recorded, or entered upon the margin.

(2) Each index required by this act may be maintained wholly, or in part, by computerization of the index.

(3) Each computerized index shall be secured by a duplicate index maintained at a separate location from the primary index.

(4) The primary index shall be secured by a code, key, or other system designed to prohibit an unauthorized person from altering the index.

**History:** R.S. 1846, Ch. 65;—CL 1857, 2747;—CL 1871, 4230;—How. 5682;—Am. 1893, Act 80, Eff. Aug. 28, 1893;—CL 1897, 8987;—CL 1915, 11720;—CL 1929, 13303;—Am. 1941, Act 263, Eff. Jan. 10, 1942;—CL 1948, 565.28;—Am. 1980, Act 95, Imd. Eff. Apr. 16, 1980;—Am. 1992, Act 212, Imd. Eff. Oct. 5, 1992.

#### **565.29 Unrecorded conveyance; validity against subsequent purchaser; relation of quit claim deed to good faith.**

Sec. 29. Every conveyance of real estate within the state hereafter made, which shall not be recorded as provided in this chapter, shall be void as against any subsequent purchaser in good faith and for a valuable consideration, of the same real estate or any portion thereof, whose conveyance shall be first duly recorded. The fact that such first recorded conveyance is in the form or contains the terms of a deed of quit-claim and release shall not affect the question of good faith of such subsequent purchaser, or be of itself notice to him of any unrecorded conveyance of the same real estate or any part thereof.

**History:** R.S. 1846, Ch. 65;—CL 1857, 2748;—CL 1871, 4231;—How. 5683;—CL 1897, 8988;—Am. 1915, Act 199, Eff. Aug. 24,

1915;—CL 1915, 11721;—CL 1929, 13304;—CL 1948, 565.29.

#### **565.30 Deeds of church pews and slips; recording.**

Sec. 30. Deeds of pews or slips in any church, may be recorded by the clerk of the township in which such a church is situated, or by the clerk of the society or proprietors, if incorporated or legally organized; and such clerks shall receive the same fees as the register of deeds is entitled to for similar services.

**History:** R.S. 1846, Ch. 65;—CL 1857, 2749;—CL 1871, 4232;—How. 5684;—CL 1897, 8989;—CL 1915, 11722;—CL 1929, 13305;—CL 1948, 565.30.

#### **565.32 Unrecorded deed of defeasance; validity against person without notice.**

Sec. 32. When a deed purports to be an absolute conveyance in terms, but is made or intended to be made defeasible by force of a deed of defeasance or other instrument for that purpose, the original conveyance shall not be thereby defeated or affected, as against any person other than the maker of the defeasance, or his heirs or devisees, or persons having actual notice thereof, unless the instrument of defeasance shall have been recorded in the registry of deeds of the county where the lands lie.

**History:** R.S. 1846, Ch. 65;—CL 1857, 2751;—CL 1871, 4234;—How. 5686;—CL 1897, 8991;—CL 1915, 11723;—CL 1929, 13306;—CL 1948, 565.32.

#### **565.33 Assignment of mortgage; effect of recording.**

Sec. 33. The recording of an assignment of a mortgage shall not, in itself, be deemed notice of such assignment to the mortgagor, his heirs or personal representatives, so as to invalidate any payment made by them, or either of them to the mortgagee.

**History:** R.S. 1846, Ch. 65;—CL 1857, 2752;—CL 1871, 4235;—How. 5687;—CL 1897, 8992;—CL 1915, 11724;—CL 1929, 13307;—CL 1948, 565.33.

#### **565.34 Purchaser; definition.**

Sec. 34. The term “purchaser,” as used in this chapter, shall be construed to embrace every person to whom any estate or interest in real estate, shall be conveyed for a valuable consideration, and also every assignee of a mortgage, or lease or other conditional estate.

**History:** R.S. 1846, Ch. 65;—CL 1857, 2753;—CL 1871, 4236;—How. 5688;—CL 1897, 8993;—CL 1915, 11725;—CL 1929, 13308;—CL 1948, 565.34.

#### **565.35 Conveyance; definition.**

Sec. 35. The term “conveyance,” as used in this chapter, shall be construed to embrace every instrument in writing, by which any estate or interest in real estate is created, aliened, mortgaged or assigned; or by which the title to any real estate may be affected in law or equity, except wills, leases for a term not exceeding 3 years, and executory contracts for the sale or purchase of lands.

**History:** R.S. 1846, Ch. 65;—CL 1857, 2754;—CL 1871, 4237;—How. 5689;—CL 1897, 8994;—CL 1915, 11726;—CL 1929, 13309;—CL 1948, 565.35.

#### **565.36 Power of attorney to convey lands; inapplicability of preceding section; executory land contract; recording; recording as evidence.**

Sec. 36. The preceding section shall not be construed to extend to a letter of attorney, or other instrument containing a power to convey lands as agent or attorney for the owner of such lands; but every such letter or instrument, and every executory contract for the sale or purchase of lands, when acknowledged or proved in the manner prescribed in this chapter, may be recorded in the registry of deeds of any county in which the lands to which such power or contract relates, may be situated; and when so acknowledged or proved, and the record thereof when recorded, or a transcript of such record duly certified, may be read in evidence in the same manner, and with the like effect, as a conveyance recorded in such county.

**History:** R.S. 1846, Ch. 65;—CL 1857, 2755;—CL 1871, 4238;—How. 5690;—CL 1897, 8995;—CL 1915, 11727;—CL 1929, 13310;—CL 1948, 565.36.

#### **565.37 Power of attorney to convey lands; recording of revocation.**

Sec. 37. No letter of attorney or other instrument so recorded, shall be deemed to be revoked by any act of the party by whom it was executed, unless the instrument containing such revocation be also recorded in the same office in which the instrument containing the power was recorded.

**History:** R.S. 1846, Ch. 65;—CL 1857, 2756;—CL 1871, 4239;—How. 5692;—CL 1897, 8998;—CL 1915, 11730;—CL 1929, 13311;—CL 1948, 565.37.



#### **565.38 New county; transcription of instruments; effect, compensation of register.**

Sec. 38. When a new county shall be organized, in whole or in part from an organized county, or from territory attached to such organized county for judicial purposes, all the records of deeds and other instruments relating to real estate in such new county, may be transcribed into the proper books by the register of deeds of such new county; which records so transcribed, shall have the same effect in all respects as original records, and the register shall be paid for transcribing the same, such sum as the board of supervisors of his county may deem just and reasonable.

**History:** R.S. 1846, Ch. 65;—CL 1857, 2757;—CL 1871, 4240;—How. 5693;—CL 1897, 8999;—CL 1915, 11731;—CL 1929, 13312;—CL 1948, 565.38.

#### **565.39 Device used as seal; effect; application to official seals.**

Sec. 39. A scroll or device used as a seal upon any deed of conveyance or other instrument whatever, whether intended to be recorded or not, shall have the same force and effect as a seal attached thereto, or impressed thereon, but this section shall not be construed to apply to such official seals as are or may be provided for by law.

**History:** R.S. 1846, Ch. 65;—CL 1857, 2758;—CL 1871, 4241;—How. 5699;—CL 1897, 9005;—CL 1915, 11740;—CL 1929, 13313;—CL 1948, 565.39.

**Former law:** Act of Oct. 23, 1822, Terr. Laws, vol. 1, p. 272, contains similar provisions. The act of June 10, 1828, provided that “any instrument to which the person making the same shall affix any device by way of seal, shall be adjudged and held to be of the same force and obligations as if it were actually sealed.” And that “all instruments executed since the thirty-first day of December, 1827, to which the person or persons executing the same may have affixed any device by way of seal, shall be adjudged and held of the same force and obligation as if the same were actually sealed.” Laws of 1828, p. 29; Revision of 1833, p. 516; Terr. Laws, vol. 2, p. 667; *Starkweather v. Martin*, 28 Mich. 479. A similar provision has been in force ever since. R.S. 1838, p. 438, 439; Sec. 8, Act 108 of 1840. Until the R.S. of 1846 (p. 487, Sec. 49), there was no statutory provision dispensing with the necessity of a seal, or a substitute therefor, to a conveyance of lands.

#### **565.40 Prior legal conveyances; effect as evidence, recording; conveyance under unacknowledged contract, record as evidence.**

Sec. 40. All conveyances of real estate heretofore made and acknowledged or proved, in accordance with the laws of this state, in force at the time of such making and acknowledgment or proof, shall have the same force as evidence, and be recorded in the same manner, and with the like effect, as conveyances executed and acknowledged in pursuance of the provisions of this chapter. And where any conveyance, with an unacknowledged contract in writing attached, annexed or appended thereto, and referred to in the body of such conveyance as being thereto attached, appended or annexed, has been heretofore recorded, or that may be hereafter recorded; the record, or a transcript of the record of such conveyance and contract, certified by the register in whose office the same may have been recorded, may be read in evidence in any court within this state without further proof thereof; but the effect of such evidence may be rebutted by other competent testimony.

**History:** R.S. 1846, Ch. 65;—CL 1857, 2759;—CL 1871, 4242;—How. 5700;—Am. 1889, Act 101, Eff. Oct. 2, 1889;—CL 1897, 9006;—CL 1915, 11741;—CL 1929, 13314;—CL 1948, 565.40.

#### **565.41 Discharge of mortgage; payment of filing fee by mortgagee; date of discharge.**

Sec. 41. (1) Within the applicable time period in section 44(2) after a mortgage has been paid or otherwise satisfied, the mortgagee or the personal representative, successor, or assign of the mortgagee shall prepare a discharge of the mortgage, file the discharge with the register of deeds for the county where the mortgaged property is located, and pay the fee for recording the discharge.

(2) If a discharge of mortgage received by a register of deeds under subsection (1) is not recorded on the day it is received, the register of deeds shall place on or attach to the discharge, by means of a stamp, electronically, or otherwise, the date the discharge is received. The date placed on or attached to the discharge under this subsection is prima facie evidence of the date the discharge was filed with the register of deeds.

**History:** Add. 1964, Act 110, Eff. Aug. 28, 1964;—Am. 2004, Act 447, Imd. Eff. Dec. 27, 2004.

#### **565.42 Discharge of mortgage; certificate of mortgagee; circuit court, or register in chancery.**

Sec. 42. Any mortgage shall also be discharged upon the record thereof by the register of deeds, in whose custody it shall be, whenever there shall be presented to him a certificate executed by the mortgagee, his personal representative or assigns, acknowledged, approved and certified as in this chapter provided, to entitle conveyances or instruments in writing in any wise affecting the title to lands to be recorded, specifying that such mortgage has been paid, or otherwise satisfied or discharged; or upon the presentation to such register of deeds of the certificate of the circuit court, signed by the judge of said court, and under the seal thereof,

certifying that it has been made to appear to said court that said mortgage has been duly paid, or upon the presentation to such register of deeds of a certificate of the register in chancery of the county and under the seal thereof certifying that a decree of foreclosure of any such mortgage has been duly entered in his office, and that the records in his office shows that such decree has been fully paid and satisfied.

**History:** R.S. 1846, Ch. 65;—CL 1857, 2761;—Am. 1867, Act 102, Imd. Eff. Mar. 26, 1867;—CL 1871, 4244;—Am. 1875, Act 47, Eff. Aug. 3, 1875;—How. 5702;—CL 1897, 9008;—CL 1915, 11743;—CL 1929, 13316;—CL 1948, 565.42.

**Compiler's note:** The register of chancery, referred to in this section, is now clerk of the circuit court. See § 600.571.

#### **565.43 Discharge of mortgage; recording of certificate; reproduced documents; reference to book and page containing certificate.**

Sec. 43. Every certificate described in section 42, and the proof or acknowledgment of the certificate, shall be recorded at full length, and a reference shall be made to the book and page containing the certificate, in the minute of the discharge of the mortgage made by the register upon the mortgage. If the register of deeds is authorized by the board of commissioners to reproduce deeds, mortgages, maps, instruments, or writings, as provided in section 2 of Act No. 105 of the Public Acts of 1964, being section 691.1102 of the Michigan Compiled Laws, and the mortgage does not exist in a hard copy medium, it is not necessary for him or her to make reference to the book and page containing the certificate on the book or page containing the mortgage. Instead, reference to the book and page containing the certificate shall be made in the index to the entry book of mortgages.

**History:** R.S. 1846, Ch. 65;—CL 1857, 2762;—CL 1871, 4245;—How. 5703;—CL 1897, 9009;—CL 1915, 11744;—CL 1929, 13317;—CL 1948, 565.43;—Am. 1959, Act 22, Imd. Eff. Apr. 30, 1959;—Am. 1992, Act 212, Imd. Eff. Oct. 5, 1992.

#### **565.44 Discharge of mortgage; refusal; civil liability; penalty; time periods.**

Sec. 44. (1) If a mortgagee or the personal representative or assignee of the mortgagee, after full performance of the condition of the mortgage, whether before or after a breach of the mortgage, or, if the mortgage is entirely due, after a tender of the whole amount due, within the applicable time period in subsection (2) after being requested and after tender of the mortgagee's reasonable charges, refuses or neglects to discharge the mortgage as provided in this chapter or to execute and acknowledge a certificate of discharge or release of the mortgage, the mortgagee is liable to the mortgagor or the mortgagor's heirs or assigns for \$1,000.00 damages. The mortgagee is also liable for all actual damages caused by the neglect or refusal to the person who performs the condition of the mortgage or makes the tender to the mortgagee or the mortgagee's heirs or assigns, or to anyone who has an interest in the mortgaged premises. Damages under this section may be recovered in an action for money damages or to procure a discharge or release of the mortgage. The court may, in its discretion, award double costs in an action under this section.

(2) The discharge of mortgage, execution and acknowledgment of a certificate, or filing of a discharge of mortgage required by this section or section 41 shall be performed within whichever of the following time periods is applicable:

(a) For the first 2 years after the effective date of the amendatory act that added this subsection, 75 days.

(b) Beginning 2 years after the effective date of the amendatory act that added this subsection, 60 days.

**History:** R.S. 1846, Ch. 65;—CL 1857, 2763;—Am. 1861, Act 13, Eff. June 15, 1861;—CL 1871, 4246;—How. 5704;—CL 1897, 9010;—CL 1915, 11745;—CL 1929, 13318;—CL 1948, 565.44;—Am. 2004, Act 447, Imd. Eff. Dec. 27, 2004.

#### **565.46 Proof and acknowledgment of deeds; application of law to instruments affecting lands.**

Sec. 46. The preceding sections of this chapter to procure, enforce and obtain the proof and acknowledgment of deeds, shall be, and the same are hereby made applicable to all instruments in writing in any wise affecting the title to lands which are required or authorized to be acknowledged, or acknowledged and recorded.

**History:** Add. 1867, Act 102, Imd. Eff. Mar. 26, 1867;—CL 1871, 4248;—How. 5706;—CL 1897, 9012;—CL 1915, 11747;—CL 1929, 13319;—CL 1948, 565.46.

#### **565.47 Recording by register of deeds; acknowledgment required.**

Sec. 47. A deed, mortgage, or other instrument in writing that by law is required to be acknowledged affecting the title to lands, or any interest therein, shall not be recorded by the register of deeds of any county unless the deed, mortgage, or other instrument is acknowledged or proved as provided by this chapter.

**History:** Add. 1867, Act 102, Imd. Eff. Mar. 26, 1867;—CL 1871, 4249;—How. 5707;—CL 1897, 9013;—CL 1915, 11748;—CL 1929, 13320;—CL 1948, 565.47;—Am. 2002, Act 23, Imd. Eff. Mar. 4, 2002.

**565.48 Deed by surviving joint tenant of lands; recording; certified copy of death.**

Sec. 48. No deed or other instrument in writing, purporting to convey an interest in land by the survivor or survivors under a deed to joint tenants or tenants by the entirety shall be recorded by the register of deeds of any county, unless, for each joint tenant or tenant by the entirety who is therein indicated to be deceased, a certified copy of the death certificate or other proof of death which is permitted by the laws of this state to be received for record by said register, is shown to have been recorded in said register's office by liber and page reference or shall accompany such deed for record.

**History:** Add. 1947, Act 20, Eff. Oct. 11, 1947;—CL 1948, 565.48.

**565.49 Conveyances; same person or persons among grantors and grantees; joint tenancy, tenancy by entireties.**

Sec. 49. Conveyances in which the grantor or 1 or more of the grantors are named among the grantees therein shall have the same force and effect as they would have if the conveyance were made by a grantor or grantors who are not named among the grantees. Conveyances expressing an intent to create a joint tenancy or tenancy by the entireties in the grantor or grantors together with the grantee or grantees shall be effective to create the type of ownership indicated by the terms of the conveyance.

**History:** Add. 1955, Act 3, Eff. Oct. 14, 1955.

## **OIL AND GAS ASSIGNMENTS**

### **Act 66 of 1956**

AN ACT to authorize the assignment of oil and gas, and the rents and profits from oil and gas properties, and the income from the sale of oil and gas produced or to be produced from oil and gas properties, as herein defined, whether presently owned or subsequently acquired, as security in, or in connection with, existing or future mortgages or deeds of trust of oil and gas properties.

**History:** 1956, Act 66, Eff. Aug. 11, 1956.

*The People of the State of Michigan enact:*

#### **565.81 Oil and gas assignment; security for indebtedness.**

Sec. 1. Hereafter, in or in connection with any existing or future mortgage or deed of trust, it shall be lawful to assign in the mortgage or in a separate written instrument or instruments signed, sealed, acknowledged and proved in the same manner as deeds, all or any part of the oil and gas located in, on or under oil and gas properties, and all or any part of the rents and profits from oil and gas properties, and the income from the sale of oil and gas produced or to be produced from oil and gas properties, to the mortgagee or trustee named in the mortgage or deed of trust as security for the indebtedness secured by the mortgage or deed of trust.

**History:** 1956, Act 66, Eff. Aug. 11, 1956.

#### **565.82 Oil and gas assignment; time of operation.**

Sec. 2. The assignment may contain provisions making it immediately operative, or operative only upon the happening of an event of default as described in the assignment or in the mortgage or deed of trust, or operative at such time as the mortgagee or trustee named in the mortgage or deed of trust may elect, and the assignment may contain further provisions to the effect that when it becomes operative the mortgagee or the trustee named in the mortgage or deed of trust thereupon shall be entitled to the present and full possession, receipt, use and right to the oil and gas, the rents, profits and income, and the oil and gas properties, as security and for application upon the indebtedness secured by the mortgage or deed of trust.

**History:** 1956, Act 66, Eff. Aug. 11, 1956.

#### **565.83 Oil and gas assignment; validity; certified copy; service on pipe line company.**

Sec. 3. The assignment shall become and be and remain effective and a good and valid assignment as against all persons, including the mortgagor or those claiming under or through him, from and after the date of execution and delivery thereof, subject however, as in the case of conveyances of an interest in real estate, to the provisions of chapter 65 of the Revised Statutes of 1846, as amended, being sections 565.1 to 565.49, inclusive, of the Compiled Laws of 1948. The assignment shall not be effective as to pipe line companies or other purchasers taking delivery of oil and gas produced from the mortgaged oil and gas properties at the time of execution and delivery of the assignment, until an executed or certified copy thereof shall have been served personally or by registered mail on the pipe line company or other purchaser.

**History:** 1956, Act 66, Eff. Aug. 11, 1956.

#### **565.84 Oil and gas assignment; duration of effectiveness.**

Sec. 4. The assignment shall become and be and remain in full force and effect until all of the indebtedness secured by the mortgage or deed of trust is fully paid, satisfied and discharged and the effectiveness in nowise shall be limited, suspended, revoked, or terminated by the occurrence of one or more events of default as described in the assignment or in the mortgage or deed of trust, or by reason of any step taken to foreclose the mortgage or deed of trust, by advertisement or by judicial proceedings, or during the period of redemption following a sheriff's or a judicial sale of the oil and gas properties.

**History:** 1956, Act 66, Eff. Aug. 11, 1956.

#### **565.85 Oil and gas assignment; definitions.**

Sec. 5. The term "oil and gas" as used herein, shall include oil or gas, or both, and the term "oil and gas properties", as used herein, shall include all types of fee, royalty, leasehold and contract interests and rights, in whole or in part, in all or any part of one or more parcels of real property in this state from which oil and gas is being or may at any time be produced; and all types of royalty, leasehold and contract interests, in whole or in part, in all or any part of oil and gas in place, in production, in storage or in transit; and all types of contract rights to explore for, drill for, produce and transport oil and gas which involve for their creation or termination a conveyance or transfer of an interest in real estate in this state; and all combinations of one or

more of the foregoing types of interests or rights.

**History:** 1956, Act 66, Eff. Aug. 11, 1956.



## **MARKETABLE RECORD TITLE**

### **Act 200 of 1945**

AN ACT to define a marketable record title to an interest in land; to require the filing of notices of claim of interest in such land in certain cases within a definite period of time and to require the recording thereof; to make invalid and of no force or effect all claims with respect to the land affected thereby where no such notices of claim of interest are filed within the required period; to provide for certain penalties for filing slanderous notices of claim of interest, and to provide certain exceptions to the applicability and operation thereof.

**History:** 1945, Act 200, Eff. Sept. 6, 1945.

*The People of the State of Michigan enact:*

#### **565.101 Marketable record title.**

Sec. 1. Any person, having the legal capacity to own land in this state, who has an unbroken chain of title of record to any interest in land for 20 years for mineral interests and 40 years for other interests, shall at the end of the applicable period be considered to have a marketable record title to that interest, subject only to claims to that interest and defects of title as are not extinguished or barred by application of this act and subject also to any interests and defects as are inherent in the provisions and limitations contained in the muniments of which the chain of record title is formed and which have been recorded within 3 years after the effective date of the amendatory act that added section 1a or during the 20-year period for mineral interests and the 40-year period for other interests. However, a person shall not be considered to have a marketable record title by reason of this act, if the land in which the interest exists is in the hostile possession of another.

**History:** 1945, Act 200, Eff. Sept. 6, 1945;—CL 1948, 565.101;—Am. 1997, Act 154, Imd. Eff. Dec. 22, 1997.

#### **565.101a “Mineral interest” defined.**

Sec. 1a. As used in this act, “mineral interest” means an interest in minerals in any land if the interest in minerals is owned by a person other than the owner of the surface of the land. Mineral interest does not include an interest in oil or gas or an interest in sand, gravel, limestone, clay, or marl.

**History:** Add. 1997, Act 154, Imd. Eff. Dec. 22, 1997.

#### **565.102 Unbroken chain of title to interest in land; conditions.**

Sec. 2. A person is considered to have an unbroken chain of title to an interest in land as provided in section 1 when the official public records disclose either of the following:

(a) A conveyance or other title transaction not less than 20 years in the past for mineral interests and 40 years for other interests, which conveyance or other title transaction purports to create the interest in that person, with nothing appearing of record purporting to divest that person of the purported interest.

(b) A conveyance or other title transaction not less than 20 years in the past for mineral interests and 40 years for other interests, which conveyance or other title transaction purports to create the interest in some other person and other conveyances or title transactions of record by which the purported interest has become vested in the person first referred to in this section, with nothing appearing of record purporting to divest the person first referred to in this section of the purported interest.

**History:** 1945, Act 200, Eff. Sept. 6, 1945;—CL 1948, 565.102;—Am. 1997, Act 154, Imd. Eff. Dec. 22, 1997.

#### **565.103 Marketable record title; successors in interest; notice of claims; filing for record.**

Sec. 3. Marketable title shall be held by a person and shall be taken by his or her successors in interest free and clear of any and all interests, claims, and charges whatsoever the existence of which depends in whole or in part upon any act, transaction, event, or omission that occurred prior to the 20-year period for mineral interests, and the 40-year period for other interests, and all interests, claims, and charges are hereby declared to be null and void and of no effect at law or in equity. However, an interest, claim, or charge may be preserved and kept effective by filing for record within 3 years after the effective date of the amendatory act that added section 1a or during the 20-year period for mineral interests and the 40-year period for other interests, a notice in writing, verified by oath, setting forth the nature of the claim. A disability or lack of knowledge of any kind on the part of anyone does not suspend the running of the 20-year period for mineral interests or the 40-year period for other interests. For the purpose of recording notices of claim for homestead interests the date from which the 20-year period for mineral interests and the 40-year period for other interests shall run shall be the date of recording of the instrument, nonjoinder, in which is the basis for the claim. A notice may be filed for record by the claimant or by any other person acting on behalf of any claimant if 1 or

more of the following conditions exist:

- (a) The claimant is under a disability.
- (b) The claimant is unable to assert a claim on his or her own behalf.
- (c) The claimant is 1 of a class but whose identity cannot be established or is uncertain at the time of filing the notice of claim for record.

**History:** 1945, Act 200, Eff. Sept. 6, 1945;—CL 1948, 565.103;—Am. 1997, Act 154, Imd. Eff. Dec. 22, 1997.

#### **565.104 Marketable record title; failure to file notice not to bar right to possession.**

Sec. 4. This act shall not be applied to bar any lessor or his successor as reversioner of his right to possession on the expiration of any lease or any lessee or his successor of his rights in and to any lease; or to bar any interest of a mortgagor or a mortgagee or interest in the nature of that of a mortgagor or mortgagee until after such instrument under which such interests are claimed shall have become due and payable, except where such instrument has no due date expressed, where such instrument has been executed by a railroad, railroad bridge, tunnel or union depot company, or any public utility or public service company; or to bar or extinguish any easement or interest in the nature of an easement, the existence of which is clearly observable by physical evidences of its use; or to bar or extinguish any easement or interest in the nature of an easement, or any rights appurtenant thereto granted, excepted or reserved by a recorded instrument creating such easement or interest, including any rights for future use, if the existence of such easement or interest is evidenced by the location beneath, upon or above any part of the land described in such instrument of any pipe, valve, road, wire, cable, conduit, duct, sewer, track, pole, tower, or other physical facility and whether or not the existence of such facility is observable, by reason of failure to file the notice herein required. Nor shall this act be deemed to affect any right, title or interest in land owned by the United States, nor any right, title or interest in any land owned by the state of Michigan, or by any department, commission or political subdivision thereof.

**History:** 1945, Act 200, Eff. Sept. 6, 1945;—Am. 1946, 1st Ex. Sess., Act 25, Imd. Eff. Feb. 26, 1946;—Am. 1947, Act 117, Imd. Eff. May 22, 1947;—CL 1948, 565.104;—Am. 1951, Act 235, Eff. Sept. 28, 1951;—Am. 1965, Act 323, Eff. Mar. 31, 1966.

#### **565.105 Notice of claim to contain land description; recording, fees, indexing.**

Sec. 5. To be effective and to be entitled to record the notice above referred to shall contain an accurate and full description of all the land affected by such notice which description shall be set forth in particular terms and not by general inclusions, but if said claim is founded upon a recorded instrument then the description in such notice may be the same as that contained in such recorded instrument. Such notice shall be filed for record in the register of deeds office of the county or counties where the land described therein is situated. The register of deeds of each county shall accept all such notices presented to him which describe land located in the county in which he serves and shall enter and record full copies thereof in the same way that deeds and other instruments are recorded and each register shall be entitled to charge the same fees for the recording thereof as are charged for recording deeds. In indexing such notices in his office each register shall enter such notices under the grantee indexes of deeds under the names of the claimants appearing in such notices.

**History:** 1945, Act 200, Eff. Sept. 6, 1945;—Am. 1947, Act 117, Imd. Eff. May 22, 1947;—CL 1948, 565.105.

#### **565.106 Construction of act; purpose; extinguishment of claim.**

Sec. 6. This act shall be construed to effect the legislative purpose of simplifying and facilitating land title transactions by allowing persons dealing with the record title owner, as defined in this act, to rely on the record title covering a period of not more than 20 years for mineral interests and 40 years for other interests prior to the date of such dealing and to that end to extinguish all claims that affect or may affect the interest dealt with, the existence of which claims arises out of or depends upon any act, transaction, event, or omission antedating the 20-year period for mineral interests and the 40-year period for other interests, unless within the 20-year period for mineral interests or the 40-year period for other interests a notice of claim as provided in section 3 has been filed for record. The claims extinguished by this act are any and all interests of any nature whatever, however denominated, and whether the claims are asserted by a person sui juris or under disability, whether the person is within or outside the state, and whether the person is natural or corporate, or private or governmental.

**History:** 1945, Act 200, Eff. Sept. 6, 1945;—CL 1948, 565.106;—Am. 1997, Act 154, Imd. Eff. Dec. 22, 1997.

#### **565.107 Limitations of actions.**

Sec. 7. Nothing contained in this act shall be construed to extend the periods for the bringing of an action or for the doing of any other required act under any existing statutes of limitation nor to affect the operation of

any existing acts governing the effect of the recording or of the failure to record any instruments affecting land nor to affect the operation of Act No. 216 of the Public Acts of 1929 nor of Act No. 58 of the Public Acts of 1917 as amended by Act No. 105 of the Public Acts of 1939.

**History:** 1945, Act 200, Eff. Sept. 6, 1945;—CL 1948, 565.107.

**Compiler's note:** For provisions of Act 216 of 1929, Act 58 of 1917, and Act 105 of 1939, referred to in this section, see § 565.381 et seq., § 558.81 et seq., and § 558.91 et seq., respectively.

#### **565.108 Filing slanderous notices of claims; costs awarded to plaintiff.**

Sec. 8. No person shall use the privilege of filing notices hereunder for the purpose of slandering the title to land, and in any action brought for the purpose of quieting title to land, if the court shall find that any person has filed a claim for that reason only, he shall award the plaintiff all the costs of such action, including such attorney fees as the court may allow to the plaintiff, and in addition, shall decree that the defendant asserting such claim shall pay to plaintiff all damages that plaintiff may have sustained as the result of such notice of claim having been so filed for record.

**History:** 1945, Act 200, Eff. Sept. 6, 1945;—CL 1948, 565.108.

#### **565.109 Claims not barred; time for filing notice of claim.**

Sec. 9. No interest, claim or charge shall be barred by the provisions of section 3 of this act until February 1, 1948, and any interest, claim or charge that would otherwise be barred by said section 3 may be preserved and kept effective by the filing of a notice of claim as required by this act prior to said first day of February, 1948.

**History:** 1945, Act 200, Eff. Sept. 6, 1945;—Am. 1946, 1st Ex. Sess., Act 25, Imd. Eff. Feb. 26, 1946;—Am. 1947, Act 117, Imd. Eff. May 22, 1947;—CL 1948, 565.109.

**DISCHARGE OF LIENS, MORTGAGES, AND OTHER CLAIMS IN LAND**  
**Act 31 of 1947**

AN ACT to authorize the state administrative board to discharge certain liens, mortgages and other claims of interest in land in which it is determined by the state administrative board the state has no interest; and to validate discharges heretofore executed.

**History:** 1947, Act 31, Imd. Eff. Apr. 4, 1947.

*The People of the State of Michigan enact:*

**565.131 Discharge of mortgages; liens, recorded claims in land by state administrative board.**

Sec. 1. The state administrative board is hereby authorized to discharge liens, mortgages and other claims of interest in land on record in favor of the state of Michigan, or any of its departments, boards, commissions, institutions or agencies, in which the state has no interest, and which are not authorized by law to be discharged by any other agency of the state. The state administrative board shall determine the interest of the state.

**History:** 1947, Act 31, Imd. Eff. Apr. 4, 1947;—CL 1948, 565.131.

**565.132 Validation of executed discharges.**

Sec. 2. Any such discharge heretofore executed by the state administrative board is hereby validated.

**History:** 1947, Act 31, Imd. Eff. Apr. 4, 1947;—CL 1948, 565.132.

## FORM OF DEEDS, MORTGAGES, AND ACKNOWLEDGMENTS

### Act 187 of 1881

AN ACT in relation to the form of deeds and mortgages of real estate and to the form of the acknowledgments of the same.

**History:** 1881, Act 187, Eff. Sept. 10, 1881.

*The People of the State of Michigan enact:*

#### **565.151 Form; warranty deed.**

Sec. 1. That any conveyance of lands worded in substance as follows: "A.B. conveys and warrants to C.D. (here describe the premises) for the sum of (here insert the consideration)," the said conveyance being dated and duly signed, sealed and acknowledged by the grantor, shall be deemed and held to be a conveyance in fee simple to the grantee, his heirs and assigns, with covenant from the grantor for himself and his heirs and personal representatives, that he is lawfully seized of the premises, has good right to convey the same, and guarantees the quiet possession thereof; that the same are free from all incumbrances, and that he will warrant and defend the title to the same against all lawful claims.

**History:** 1881, Act 187, Eff. Sept. 10, 1881;—How. 5728;—CL 1897, 9014;—CL 1915, 11749;—CL 1929, 13321;—CL 1948, 565.151.

#### **565.152 Form; quit claim deed.**

Sec. 2. Any conveyance of lands worded in substance as follows: "A.B. quit claims to C.D. (here describe the premises) for the sum of (here insert the consideration)," the said conveyance, being duly signed, sealed, and acknowledged by the grantor, shall be deemed to be a good and sufficient conveyance in quit claim to the grantee, his heirs, and assigns.

**History:** 1881, Act 187, Eff. Sept. 10, 1881;—How. 5729;—CL 1897, 9015;—CL 1915, 11750;—CL 1929, 13322;—CL 1948, 565.152.

#### **565.153 Estates; word of creation.**

Sec. 3. It shall not be necessary to use the words "heirs and assigns of the grantee" to create in the grantee an estate of inheritance; and if it be the intention of the grantor to convey any lesser estate, it shall be so expressed in the deed.

**History:** 1881, Act 187, Eff. Sept. 10, 1881;—How. 5730;—CL 1897, 9016;—CL 1915, 11751;—CL 1929, 13323;—CL 1948, 565.153.

#### **565.154 Mortgage; wording; validity and enforceability.**

Sec. 4. A mortgage of lands that is worded in substance as follows: "A.B. mortgages and warrants to C.D., (here describe the premises) to secure the re-payment of" (here describe the indebtedness or obligations the mortgage secures) and is signed by the grantor, is a valid and enforceable mortgage to the grantee and the grantee's heirs, assigns, successors, and personal representatives with warranty from the grantor and the grantor's legal representatives, of marketable title in the grantor, free from prior incumbrances. If the indebtedness or obligations secured are described generally, such as "all indebtedness that A.B. now and in the future owes to C.D.", and if the words "and warrant" are omitted from the form, the mortgage is valid and enforceable, but without warranty.

**History:** 1881, Act 187, Eff. Sept. 10, 1881;—How. 5731;—CL 1897, 9017;—CL 1915, 11752;—CL 1929, 13324;—CL 1948, 565.154;—Am. 2004, Act 422, Imd. Eff. Dec. 15, 2004.



## ANNUAL STATEMENTS TO MORTGAGORS

### Act 125 of 1966

An act to require mortgagees and their agents to furnish annual statements to mortgagors; to require mortgagees, vendors of land contracts, and their agents to make certain adjustments to escrow accounts; and to prescribe certain rights and duties.

**History:** 1966, Act 125, Eff. Mar. 10, 1967;—Am. 1976, Act 112, Imd. Eff. May 14, 1976;—Am. 1993, Act 285, Imd. Eff. Dec. 28, 1993.

*The People of the State of Michigan enact:*

#### **565.161 Annual statements to mortgagor; when required, contents.**

Sec. 1. Where, by the terms of a mortgage on real property, the mortgagor is required to make periodic payments which include sums to be allocated to an escrow account for the purpose of paying taxes, insurance or improvements to the property, or any combination of such purposes, the mortgagee or agent receiving the periodic payments shall furnish the mortgagor with a statement within 60 days of the close of the calendar year, showing the beginning balance of the escrow fund, total receipts received by the fund during the calendar year, an itemized statement of all expenditures from the fund during the calendar year and the balance in the fund at the end of the calendar year.

**History:** 1966, Act 125, Eff. Mar. 10, 1967.

#### **565.162 Annual statements to mortgagor; exceptions to furnishing.**

Sec. 2. The annual statement specified in section 1 is not required where the mortgagor is provided with a monthly billing form or mortgagor passbook either of which provides the escrow fund balance and record of expenditures for taxes.

**History:** 1966, Act 125, Eff. Mar. 10, 1967.

#### **565.163 Failure of mortgagee or agent to pay property taxes; liability for penalties or fees.**

Sec. 3. If, pursuant to an agreement, a mortgagor has paid sufficient funds into an escrow account for the purpose of paying taxes on mortgaged real property, and if the mortgagee or his agent has not paid those property taxes, then the person to whom the mortgagor paid the funds shall be liable to the mortgagor for any penalties or fees incurred by the mortgagor as a result of that failure to pay taxes.

**History:** Add. 1976, Act 112, Imd. Eff. May 14, 1976.

#### **565.164 Adjustment to escrow account.**

Sec. 4. (1) Not later than March 1, 1994, a mortgagee, a vendor of a land contract, or their agent shall adjust the escrow account maintained for the payment of real property taxes to be levied in the 1994 calendar year by an amount that the mortgagee, vendor, or agent reasonably anticipates to be paid during the 1994 calendar year.

(2) An adjustment to the escrow account pursuant to subsection (1) shall become effective for the periodic payment that is due not later than April 30, 1994.

(3) Any adjustments made to the escrow account shall be considered reasonable if the adjustment is a reduction of not less than 35% of the total property taxes levied for the 1993 calendar year.

(4) Upon the receipt of a written request by a mortgagor or a vendee of a land contract, the mortgagee, vendor, or their agent shall, within a reasonable time, adjust the escrow account maintained for the payment of the 1994 real property taxes by reducing the amount required to be escrowed based upon the actual amount of taxes levied on the property in 1993 for local school district and intermediate school district operating purposes. An adjustment under this subdivision is required only if the mortgagor or vendee includes with the written request either of the following:

(a) The 1993 tax statements that state the actual dollar amount of real property tax levied for local school district and intermediate school district operating purposes.

(b) A certificate by the local taxing authority that states the actual dollar amount of real property tax levied for local school district and intermediate school district operating purposes.

(5) This section shall not be construed to prohibit a mortgagee, a vendor of a land contract, or their agent from adjusting the escrow account if information is or becomes available regarding the actual amount of real property tax levied or to be levied on the property for local school district and intermediate school district operating purposes.

(6) This section shall not be construed to require a mortgagee, a vendor of a land contract, or their agent to adjust the escrow account for a periodic payment that is due before April 1, 1994.

**History:** Add. 1993, Act 285, Imd. Eff. Dec. 28, 1993.

## **RECORDING REQUIREMENTS**

### **Act 103 of 1937**

AN ACT to prescribe certain conditions relative to the execution of instruments entitled to be recorded in the office of the register of deeds.

**History:** 1937, Act 103, Eff. Oct. 29, 1937.

*The People of the State of Michigan enact:*

#### **565.201 Requirements for recording with register of deeds.**

Sec. 1. (1) An instrument executed after October 29, 1937 by which the title to or any interest in real estate is conveyed, assigned, encumbered, or otherwise disposed of shall not be received for record by the register of deeds of any county of this state unless that instrument complies with each of the following requirements:

(a) The name of each person purporting to execute the instrument is legibly printed, typewritten, or stamped beneath the original signature or mark of the person.

(b) A discrepancy does not exist between the name of each person as printed, typewritten, or stamped beneath their signature and the name as recited in the acknowledgment or jurat on the instrument.

(c) The name of any notary public whose signature appears upon the instrument is legibly printed, typewritten, or stamped upon the instrument immediately beneath the signature of that notary public.

(d) The address of each of the grantees in each deed of conveyance or assignment of real estate, including the street number address if located within territory where street number addresses are in common use, or, if not, the post office address, is legibly printed, typewritten, or stamped on the instrument.

(e) If the instrument is executed before April 1, 1997, each sheet of the instrument is all of the following:

(i) Typewritten or printed in type not smaller than 8-point size.

(ii) Not more than 8-1/2 by 14 inches.

(iii) Legible.

(iv) On paper of not less than 13 (17x22—500) pound weight.

(f) If the instrument is executed after April 1, 1997, each sheet of the instrument complies with all of the following requirements:

(i) Has a margin of unprinted space that is at least 2-1/2 inches at the top of the first page and at least 1/2 inch on all remaining sides of each page.

(ii) Subject to subsection (3), displays on the first line of print on the first page of the instrument a single statement identifying the recordable event that the instrument evidences.

(iii) Is electronically, mechanically, or hand printed in 10-point type or the equivalent of 10-point type.

(iv) Is legibly printed in black ink on white paper that is not less than 20-pound weight.

(v) Is not less than 8-1/2 inches wide and 11 inches long or more than 8-1/2 inches wide and 14 inches long.

(vi) Contains no attachment that is less than 8-1/2 inches wide and 11 inches long or more than 8-1/2 inches wide and 14 inches long.

(2) Subsection (1)(e) and (f) do not apply to instruments executed outside this state or to the filing or recording of a plat or other instrument, the size of which is regulated by law.

(3) A register of deeds shall not record an instrument executed after April 1, 1997 if the instrument purports to evidence more than 1 recordable event.

(4) Any instrument received and recorded by a register of deeds shall be conclusively presumed to comply with this act. The requirements contained in this act are cumulative to the requirements imposed by any other act relating to the recording of instruments.

(5) An instrument that complies with the provisions of this act and any other act relating to the recording of instruments shall not be rejected for recording because of the content of the instrument.

**History:** 1937, Act 103, Eff. Oct. 29, 1937;—Am. 1941, Act 179, Eff. Jan. 10, 1942;—Am. 1945, Act 213, Eff. Sept. 6, 1945;—CL 1948, 565.201;—Am. 1963, Act 150, Eff. Sept. 6, 1963;—Am. 1964, Act 196, Eff. Jan. 1, 1965;—Am. 1996, Act 459, Eff. Apr. 1, 1997;—Am. 2002, Act 19, Imd. Eff. Mar. 4, 2002.

#### **565.201a Recording requirements; scrivener's name and address on recorded instruments.**

Sec. 1a. Each instrument described in section 1 executed after January 1, 1964 shall contain the name of the person who drafted the instrument and the business address of such person.

**History:** Add. 1963, Act 150, Eff. Sept. 6, 1963.

**565.202 Affidavit; contents.**

Sec. 2. The register of deeds shall, however, receive any such instrument for record, although the same does not comply with the requirements of this act: Provided, There is recorded therewith an affidavit of some person having personal knowledge of the facts, which affidavit shall be either printed or typewritten, shall comply with the requirements of this act, and shall state therein:

(a) The correct name of any person, the name of whom was not printed, typewritten or stamped upon such instrument as required by this act;

(b) In case such instrument does not comply with the requirements of paragraph (b) of section 1, the correct name of such person and shall state that each of the names used in such instrument refer to such person.

**History:** 1937, Act 103, Eff. Oct. 29, 1937;—CL 1948, 565.202.

**565.203 Inapplicability of act.**

Sec. 3. The provisions of this act shall not apply to the following instruments: any decree, order, judgment or writ of any court, will, death certificate, or any instrument executed or acknowledged outside of the state of Michigan. The provisions of paragraphs (a), (c) and (d) of section 1 shall not apply to any instrument upon which the signature itself is printed, typewritten or stamped.

**History:** 1937, Act 103, Eff. Oct. 29, 1937;—CL 1948, 565.203.

**STATEMENT OF MARITAL STATUS IN INSTRUMENTS CONVEYING OR MORTGAGING  
REAL ESTATE  
Act 79 of 1915**

AN ACT to provide certain requirements in written instruments conveying or mortgaging real estate or any interest therein in which there are male grantors, mortgagors or other parties executing the same to entitle the same to record.

**History:** 1915, Act 79, Eff. Aug. 24, 1915.

*The People of the State of Michigan enact:*

**565.221 Written instruments conveying or mortgaging real estate; statement of marital status; refusal to receive instrument for record; recording affidavit showing marital status; record of instrument and affidavit; effect; instrument recorded without marital status shown; elapse of 10 years; evidence.**

Sec. 1. All written instruments conveying or mortgaging real estate or any interest therein, hereafter executed, shall state whether any and all male grantors, mortgagors, or other parties executing the instrument are married or single, and the register of deeds of the county in which the instrument is offered for record shall refuse to receive the instrument for record unless it conforms to the provisions of this act. If the instrument has been recorded in the office of the register of deeds of any county without the instrument showing the marital status as herein required, an affidavit stating the facts, executed in conformity with the provisions of Act No. 123 of the Public Acts of 1915, as amended, being sections 565.451a to 565.453 of the Michigan Compiled Laws, may be recorded in the register's office. Upon the recording of the affidavit showing the marital status of the male grantor, mortgagor, or party executing, on the date of the instrument, the record of the affidavit and the record of the instrument shall be effectual for all purposes of a legal record, and the record of the instrument and affidavit or a transcript thereof may be given in evidence in all cases, and the instrument shall be construed to be as valid and effectual as if it had contained a statement showing the marital status of the male person or persons executing it.

If an instrument has been recorded in the office of the register of deeds of any county without the instrument showing the marital status as herein required, and a period of 10 years has elapsed since the recording of the instrument, the record of the instrument or a transcript thereof may be given in evidence in all cases and shall be effectual for all purposes of a legal record and the instrument shall be construed to be as valid and effectual as if it had contained a statement showing the marital status of the male person or persons executing it.

**History:** 1915, Act 79, Eff. Aug. 24, 1915;—CL 1915, 11716;—CL 1929, 13327;—Am. 1937, Act 163, Imd. Eff. July 9, 1937;—CL 1948, 565.221;—Am. 1980, Act 489, Imd. Eff. Jan. 21, 1981.



**SEALING OF DEEDS AND OTHER INSTRUMENTS**  
**Act 198 of 1895**

AN ACT to establish a law uniform with the laws of other states relating to the sealing of deeds and other written instruments.

**History:** 1895, Act 198, Eff. Aug. 30, 1895.

*The People of the State of Michigan enact:*

**565.231 Instruments deemed sealed.**

Sec. 1. That in addition to the mode in which such instruments may now be executed in this state, hereafter all deeds and other instruments in writing executed by any person or by any private corporation, not having a corporate seal, and now required to be under seal, shall be deemed in all respects to be sealed instruments, and shall be received in evidence as such, provided the word "seal" or the letters "L.S." are added in the place where the seal should be affixed.

**History:** 1895, Act 198, Eff. Aug. 30, 1895;—CL 1897, 9018;—CL 1915, 11753;—CL 1929, 13328;—CL 1948, 565.231.

**565.232 Impression of seal; corporate seal.**

Sec. 2. A seal of a court, public officer or corporation may be impressed directly upon the instrument or writing to be sealed, or upon wafer, wax or other adhesive substance affixed thereto, or upon paper or other similar substance affixed thereto by mucilage or other adhesive substance. An instrument or writing duly executed in the corporate name of a corporation, which shall not have adopted a corporate seal, by the proper officers of the corporation under any seal, shall be deemed to have been executed under the corporate seal.

**History:** 1895, Act 198, Eff. Aug. 30, 1895;—CL 1897, 9019;—CL 1915, 11754;—CL 1929, 13329;—CL 1948, 565.232.

**SEALS ON INSTRUMENTS AFFECTING REAL ESTATE**  
**Act 63 of 1937**

AN ACT relative to the use of seals on instruments affecting real estate.

**History:** 1937, Act 63, Imd. Eff. June 8, 1937.

*The People of the State of Michigan enact:*

**565.241 Seals on instruments affecting real estate.**

Sec. 1. Hereafter the affixing of an actual seal, a scroll or device used as a seal, the word "seal" or letters "L.S." after the signature of any individual, partnership or corporation executing any deed, mortgage, or other instrument affecting the title to real estate, or any interest therein, shall be unnecessary, and such instruments hereafter executed without affixing an actual seal, a scroll or device used as a seal, the word "seal" or letters "L.S." after such signatures, shall be construed to be sealed instruments and valid and effectual to convey the legal estate of the premises therein described, and the record of such instrument, if otherwise eligible to record, or a transcript thereof, may be given in evidence as in other cases.

**History:** 1937, Act 63, Imd. Eff. June 8, 1937;—CL 1948, 565.241;—Am. 1949, Act 4, Eff. Sept. 23, 1949.

**565.242 Seals on instruments affecting real estate; instruments previously recorded; construction.**

Sec. 2. The record of any instrument affecting the title to real estate or any interest therein heretofore recorded which does not show that an actual seal, a scroll or device used as a seal, the word "seal" or the letters "L.S." was affixed to the original instrument, or a transcript thereof, may be given in evidence as in other cases and shall be effectual for all purposes of a legal record and such instrument shall be construed to be as valid and effectual as if such instrument had been in such respect duly executed.

**History:** 1937, Act 63, Imd. Eff. June 8, 1937;—CL 1948, 565.242.

**ACKNOWLEDGMENT OF WRITTEN INSTRUMENTS**  
**Act 185 of 1895**

**565.251-565.256 Repealed. 1969, Act 57, Eff. Mar. 20, 1970.**

## UNIFORM RECOGNITION OF ACKNOWLEDGMENTS ACT

### Act 57 of 1969

AN ACT to establish the recognition to be given in this state to acknowledgments and notarial acts outside this state; and to repeal certain acts and parts of acts.

**History:** 1969, Act 57, Eff. Mar. 20, 1970.

*The People of the State of Michigan enact:*

#### **565.261 Uniform recognition of acknowledgments act; short title.**

Sec. 1. This act shall be known and may be cited as the “uniform recognition of acknowledgments act”.

**History:** 1969, Act 57, Eff. Mar. 20, 1970.

#### **565.262 “Notarial acts” defined.**

Sec. 2. As used in this act:

(a) “Notarial acts” means acts that the laws of this state authorize notaries public of this state to perform, including the administering of oaths and affirmations, taking proof of execution and acknowledgments of instruments, and attesting documents. Notarial acts may be performed outside this state for use in this state with the same effect as if performed by a notary public of this state by the following persons authorized pursuant to the laws and regulations of other governments in addition to any other person authorized by the laws of this state:

(i) A notary public authorized to perform notarial acts in the place in which the act is performed.

(ii) A judge, clerk, or deputy clerk of any court of record in the place in which the notarial acts are performed.

(iii) An officer of the foreign service of the United States, a consular agent or any other person authorized by regulation of the United States department of state to perform notarial acts in the place in which the act is performed.

(iv) A commissioned officer in active service with the armed forces of the United States and any other person authorized by regulation of the armed forces to perform notarial acts if the notarial acts are performed for 1 of the following or his or her dependents:

(A) A merchant seaman of the United States.

(B) A member of the armed forces of the United States.

(C) Any other person serving with or accompanying the armed forces of the United States.

(v) Any other person authorized to perform notarial acts in the place in which the act is performed.

(b) “Satisfactory evidence” means evidence upon which reliance is placed upon either of the following:

(i) The sworn word of a credible witness who is personally known to the notary public and who personally knows the signer.

(ii) A current identification card or document issued by a federal or state government that contains the bearer's photograph and signature.

**History:** 1969, Act 57, Eff. Mar. 20, 1970;—Am. 1997, Act 5, Imd. Eff. May 5, 1997.

#### **565.263 Authority of officer; authentication.**

Sec. 3. (1) If the notarial act is performed by any of the persons described in subdivisions (a) to (d) of section 2, other than a person authorized to perform notarial acts by the laws or regulations of a foreign country, the signature, rank or title and serial number, if any, of the person are sufficient proof of the authority of a holder of that rank or title to perform the act. Further proof of his authority is not required.

(2) If the notarial act is performed by a person authorized by the laws or regulations of a foreign country to perform the act, there is sufficient proof of the authority of that person to act if any of the following exist:

(a) Either a foreign service officer of the United States resident in the country in which the act is performed or a diplomatic or consular officer of the foreign country resident in the United States certifies that a person holding that office is authorized to perform the act.

(b) The official seal of the person performing the notarial act is affixed to the document.

(c) The title and indication of authority to perform notarial acts of the person appears either in a digest of foreign law or in a list customarily used as a source of such information.

(3) If the notarial act is performed by a person other than 1 described in subsections (1) and (2), there is sufficient proof of the authority of that person to act if the clerk of a court of record in the place in which the notarial act is performed certifies to the official character of that person and to his authority to perform the notarial act.

(4) The signature and title of the person performing the act are prima facie evidence that he is a person with the designated title and that the signature is genuine.

**History:** 1969, Act 57, Eff. Mar. 20, 1970.

#### **565.264 Certificate of person taking acknowledgment.**

Sec. 4. The person taking an acknowledgment shall certify that the person acknowledging appeared before him and acknowledged he executed the instrument; and the person acknowledging was known to the person taking the acknowledgment or that the person taking the acknowledgment had satisfactory evidence that the person acknowledging was the person described in and who executed the instrument.

**History:** 1969, Act 57, Eff. Mar. 20, 1970.

#### **565.265 Certificate of acknowledgment; form acceptable.**

Sec. 5. The form of a certificate of acknowledgment used by a person whose authority is recognized under section 2 shall be accepted in this state if 1 of the following is true:

- (a) The certificate is in a form prescribed by the laws or regulations of this state.
- (b) The certificate is in a form prescribed by the laws applicable in the place in which the acknowledgment is taken.
- (c) The certificate contains the words “acknowledged before me”, or their substantial equivalent.

**History:** 1969, Act 57, Eff. Mar. 20, 1970.

#### **565.266 Acknowledged before me; definition.**

Sec. 6. The words “acknowledged before me” means:

- (a) That the person acknowledging appeared before the person taking the acknowledgment.
- (b) That he acknowledged he executed the instrument.
- (c) That, in the case of:
  - (i) A natural person, he executed the instrument for the purposes therein stated.
  - (ii) A corporation, the officer or agent acknowledged he held the position or title set forth in the instrument and certificate, he signed the instrument on behalf of the corporation by proper authority and the instrument was the act of the corporation for the purpose therein stated.
  - (iii) A partnership, the partner or agent acknowledged he signed the instrument on behalf of the partnership by proper authority and he executed the instrument as the act of the partnership for the purposes therein stated.
  - (iv) A person acknowledging as principal by an attorney in fact, he executed the instrument by proper authority as the act of the principal for the purposes therein stated.
  - (v) A person acknowledging as a public officer, trustee, administrator, guardian or other representative, he signed the instrument by proper authority and he executed the instrument in the capacity and for the purposes therein stated.
- (d) That the person taking the acknowledgment either knew or had satisfactory evidence that the person acknowledging was the person named in the instrument or certificate.

**History:** 1969, Act 57, Eff. Mar. 20, 1970.

#### **565.267 Statutory short forms of acknowledgment.**

Sec. 7. (1) The forms of acknowledgment set forth in this section may be used and are sufficient for their purposes under any law of this state. The forms shall be known as “statutory short forms of acknowledgment” and may be referred to by that name. The authorization of the forms in this section does not preclude the use of other forms.

(2) For an individual acting in his  
own right:

State  
of  
County  
of

The foregoing instrument was acknowledged before me this (date) by (name of person acknowledged).

(Signature of person taking  
acknowledgment)

(Title or rank)

(Serial number, if any)

(3) For a corporation:

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State  
of  
County  
of

The foregoing instrument was acknowledged before me this (date) by (name of officer or agent, title or officer or agent) of (name of corporation acknowledging) a (state or place of incorporation) corporation, on behalf of the corporation.

(Signature of person taking  
acknowledgment)  
(Title or rank)  
(Serial number, if any)

(4)For a partnership:

State  
of  
County  
of

The foregoing instrument was acknowledged before me this (date) by (name of acknowledging partner or agent), partner (or agent) on behalf of (name of partnership), a partnership.

(Signature of person taking  
acknowledgment)  
(Title or rank)  
(Serial number, if any)

(5)For an individual acting as principal by an attorney in fact:

State  
of  
County  
of

The foregoing instrument was acknowledged before me this (date) by (name of attorney in fact) as attorney in fact on behalf of (name of principal).

(Signature of person taking  
acknowledgment)  
(Title or rank)  
(Serial number, if any)

(6)By any public officer, trustee or personal representative:

State  
of  
County  
of

The foregoing instrument was acknowledged before me this (date) by (name and title of position).

(Signature of person taking  
acknowledgment)  
(Title or rank)  
(Serial number, if any)

**History:** 1969, Act 57, Eff. Mar. 20, 1970.

**565.268 Acknowledgments unaffected by act.**

Sec. 8. A notarial act performed prior to the effective date of this act is not affected by this act. This act provides an additional method of proving notarial acts. Nothing in this act diminishes or invalidates the recognition accorded to notarial acts by other laws of this state.

**History:** 1969, Act 57, Eff. Mar. 20, 1970.

**565.269 Uniformity of interpretation.**

Sec. 9. This act shall be so interpreted as to make uniform the laws of those states which enact it.

**History:** 1969, Act 57, Eff. Mar. 20, 1970.

**565.270 Repeal.**

Sec. 10. Act No. 185 of the Public Acts of 1895, being sections 565.251 to 565.256 of the Compiled Laws of 1948, is repealed.



**History:** 1969, Act 57, Eff. Mar. 20, 1970.

## ACKNOWLEDGMENT OF DEEDS OR OTHER INSTRUMENTS BY MARRIED WOMEN

### Act 62 of 1877

AN ACT relative to the acknowledgment of deeds and other instruments affecting real property by married women.

**History:** 1877, Act 62, Imd. Eff. Apr. 20, 1877.

*The People of the State of Michigan enact:*

#### **565.281 Acknowledgment by married woman.**

Sec. 1. That hereafter the acknowledgment of any married woman to a deed of conveyance or other instrument affecting real property, may be taken in the same manner as if she were sole.

**History:** 1877, Act 62, Imd. Eff. Apr. 20, 1877;—How. 5662;—CL 1897, 8966;—CL 1915, 11698;—CL 1929, 13337;—CL 1948, 565.281.

**Former law:** See section 2 of Act 104 of 1875. The act of Aug. 29, 1805, provided that “when husband and wife have sealed and delivered a writing, if the wife appear before such court” (which it would seem must be a court of record), “judge, justice, or notary public, and being examined privily and apart from her husband, shall declare that she did freely and willingly seal and deliver the said writing, to be then shown and explained to her, and wishes not to retract it, and consenteth that it may be recorded, a certificate of such privy examination being returned and recorded with the writing; and the writing being acknowledged also by the husband, or proved by witnesses to be his act, in such case the said writing shall not only be sufficient to convey or release any right of dower thereby intended to be released or conveyed, but be as effectual for every other purpose as if she were an unmarried woman.” Woodward Code, p. 53: Cass Code, page 45; Terr. Laws, vol. 1, p. 39. If the grantor did not reside in Michigan, no different acknowledgment seemed to be required of the married woman than of any other person; but the deed, executed as before stated in the case of non-residents, together with any relinquishment of dower, was to “be effectual.” The act of May 27, 1820, provided that no estate of a feme covert residing in this territory should pass by her deed without a previous acknowledgment made “on a private examination apart from her husband, that she executed such deed freely, without any fear or compulsion of her husband;” but where any feme covert not residing in the territory should join with her husband in any deed or conveyance of, or relating to any lands or real estate within the territory, it might be executed and acknowledged in all respects as if she were sole, and she should thereby be barred of all claim of dower, and all other right and title therein as if she were sole. Code of 1820, p. 159; Terr. Laws, vol. 1, p. 518. This provision was re-enacted in 1827, and continued in force until and including August 31, 1838, when it was repealed by the Revised Statutes of that year. See revision of 1827, p. 259; and 1833, p. 280; Terr. Laws, vol. 2, p. 362. The Revised Statutes of 1838 required the acknowledgment of the wife to be taken separately and apart from her husband, and that she should acknowledge that she executed the deed without any fear or compulsion of her husband, p. 258, Sec. 11. And to bar her dower she must in the deed release her claim thereto, p. 263, Sec. 7. Sec. 4 of Act 108, 1840, p. 167, provided that the right of dower which a married woman might have in the state should not be passed or conveyed except by deed executed by her, to be acknowledged by her on a private examination, separate and apart from her husband, that she had executed the deed without fear or compulsion from any one. This provision, it will be seen, relates only to the release of dower. It was in force until Mar. 1, 1847, when the Revised Statutes of 1846 took effect.

#### **565.282 Validation of acknowledgments.**

Sec. 2. Any acknowledgment of any married woman to a deed of conveyance or other instrument affecting real property taken since the fourth day of August, A.D. 1875, in the same manner as if such married woman had been sole, is hereby declared valid and effectual for all intents and purposes, and shall be so held in all courts and places.

**History:** 1877, Act 62, Imd. Eff. Apr. 20, 1877;—How. 5662a;—CL 1897, 8967;—CL 1915, 11699;—CL 1929, 13338;—CL 1948, 565.282.

**UNRECORDED DEEDS**  
**Act 188 of 1881**

AN ACT requiring the holders of unrecorded deeds to record such deeds, or furnish the same for record.

**History:** 1881, Act 188, Eff. Sept. 10, 1881.

*The People of the State of Michigan enact:*

**565.291 Unrecorded deeds held by grantor; recording.**

Sec. 1. That whenever any grantor, who has heretofore conveyed or shall hereafter convey, any real estate within this state, shall have or hold in his possession any unrecorded deed or deeds through or under which he derived title of any lands by him so conveyed, it shall be his duty on the written request of his grantee or any subsequent grantee, to cause such deed or deeds to be recorded in the office of the register of deeds of the proper county, or cause the same to be delivered to such grantee demanding the same for the purpose of recording, within 20 days from the time when such written request shall have been served upon him.

**History:** 1881, Act 188, Eff. Sept. 10, 1881;—How. 5714;—CL 1897, 9029;—CL 1915, 11764;—CL 1929, 13342;—CL 1948, 565.291.

**565.292 Unrecorded deeds; failure to record or deliver to grantee; penalty; civil liability.**

Sec. 2. If such grantor shall neglect or refuse to record such deed or deliver the same to such grantee after having been requested so to do, as provided in the preceding section, within the time above limited, he shall be liable to said grantee, his heirs, representatives or assigns, in the penal sum of 100 dollars damages, and also for all actual damages occasioned by such neglect or refusal to the person or persons entitled thereto, to be recovered in an action on the case with costs of suit.

**History:** 1881, Act 188, Eff. Sept. 10, 1881;—How. 5715;—CL 1897, 9030;—CL 1915, 11765;—CL 1929, 13343;—CL 1948, 565.292.

**LAND PATENTS**  
**Act 21 of 1837**

AN ACT to provide for recording patents for land and for other purposes.

**History:** 1837, Act 21, Imd. Eff. Feb. 23, 1837.

*The People of the State of Michigan enact:*

**565.301 Land patents; recording; existing records; validation, use as evidence.**

Sec. 1. It shall be the duty of the registers of deeds, in the several counties of this state, to receive for record, and record all patents of lands, from the United States, or this state, or any copy thereof, duly certified by the commissioner of the United States general land office, or by the secretary of state of this state, or other officer having the legal custody of the records of any such patents, in the same manner and with like effect, as by existing law he is required to receive and record deeds and conveyances; and it shall be the duty of the secretary of state of this state, to record all patents of lands issued by this state, in suitable records; and the existing record of patents, in the office of the secretary of state of this state, and all copies of the record of patents heretofore made and certified to by the secretary of state of this state, and recorded by the register of deeds of any county of this state, are hereby declared legal records, and shall have the same force and effect as if recorded after the passage of this act, and such certified copies of the record of patents heretofore recorded in the office of said secretary of state, and the record of such certified copies may be read in evidence in all courts of this state with the same force and effect as the original patents.

**History:** 1837, Act 21, Imd. Eff. Feb. 23, 1837;—CL 1857, 2764;—CL 1871, 4257;—Am. 1875, Act 46, Eff. Aug. 3, 1875;—Am. 1877, Act 33, Imd. Eff. Mar. 22, 1877;—How. 5679;—CL 1897, 8984;—CL 1915, 11717;—CL 1929, 13344;—CL 1948, 565.301.

**565.302 Record of patent as evidence.**

Sec. 2. The record of a patent, recorded in the register's office or a transcript of such record certified by the register in whose office the same may be recorded, under his hand, may be read in evidence, in any court in this state, without further proof thereof.

**History:** 1837, Act 21, Imd. Eff. Feb. 23, 1837;—CL 1857, 2765;—CL 1871, 4258;—How. 5680;—CL 1897, 8985;—CL 1915, 11718;—CL 1929, 13345;—CL 1948, 565.302.

**LOST DEEDS AND OTHER INSTRUMENTS**  
**Act 59 of 1875**

AN ACT to provide for recording certified copies of lost deeds, and other instruments affecting the title to real estate.

**History:** 1875, Act 59, Eff. Aug. 3, 1875.

*The People of the State of Michigan enact:*

**565.321 Lost or destroyed instrument; recordation of certified transcript; procedure.**

Sec. 1. In all cases where a deed, mortgage, or other instrument affecting the title to real estate, shall have been, or shall be executed, affecting land in 2 or more counties, and when the same shall have been duly recorded in the office of the register of deeds in any county in which any part of the lands to be affected thereby is situate, and such instrument shall have been lost or destroyed before being recorded in other counties in which land affected thereby shall be situate, it shall be lawful for any party, or parties interested in such lost deed, or other writing, or in the real estate the title to which shall be affected thereby, to apply to the judge of the probate court of the county where such real estate may be situate in which the record shall not have been made, for an order to record a duly certified transcript of such deed, mortgage or other instrument, in such county, and thereupon such judge of probate shall give notice, by publication in accordance with the practice of such court, for 3 successive weeks, of such application, and of the time and place, when and where, a hearing will be had thereon, and on such hearing, if it shall appear to such probate judge that such deed, mortgage or other instrument, was duly executed, and has been legally recorded in any county in this state, and that the same was lost or destroyed before being recorded in other counties in which real estate to be affected thereby was situate, such probate judge shall make an order authorizing a certified transcript of such deed, mortgage, or other writing, to be recorded in said county, and shall annex a duly certified copy of such order to such copy of such deed, mortgage, or other instrument, and thereupon such certified copy of deed, mortgage, or other instrument, and such order authorizing a record thereof, may be recorded in the office of the register of deeds of the county in which such order shall be made, and such record shall have the same force and effect as the record of the original would have had had the same been recorded before being lost or destroyed.

**History:** 1875, Act 59, Eff. Aug. 3, 1875;—How. 5717;—CL 1897, 9031;—CL 1915, 11766;—CL 1929, 13346;—CL 1948, 565.321

**REPLACING DEED GIVEN AT JUDICIAL SALE**  
**Act 71 of 1877**

AN ACT to provide for replacing conveyances made on judicial sales, and which may have been lost or destroyed.

**History:** 1877, Act 71, Eff. Aug. 21, 1877.

*The People of the State of Michigan enact:*

**565.331 New deed; execution and recording upon loss or destruction of deed given at judicial sale.**

Sec. 1. That whenever it shall be made to appear to any court of record by petition duly verified that a sale of real estate has or may hereafter be made in pursuance of a decree or order, or to satisfy any judgment of such court, and that a deed has been made therein, and said deed has not been recorded in the proper registry of deeds, but has been lost or destroyed; said court, upon due proof of such fact, may by order to be made in the cause in which such decree, order, or judgment was entered, direct a new deed to be made in place of the said original deed so lost or destroyed; said deed, when executed, may be acknowledged and recorded in the proper registry of deeds, and shall be as valid to convey the interest sold, and it, or the record thereof, shall have the same effect as evidence as said original deed would have.

**History:** 1877, Act 71, Eff. Aug. 21, 1877;—How. 5718;—CL 1897, 9032;—CL 1915, 11767;—CL 1929, 13347;—CL 1948, 565.331.

**565.332 New deed; person to execute.**

Sec. 2. Such new deed shall be executed by the officer who made such sale, or by his successor in office: Provided, That in counties having 2 circuit court commissioners, if the commissioner who made such sale shall not be then in office, either of the then commissioners may be directed to execute the new conveyance: And provided further: That if such sale shall have been made by an executor, administrator, or guardian, or by any special commissioner appointed for that purpose by any court the court may direct the person who made such sale to execute such new deed, if he be within the jurisdiction of the court, but if he be dead, or be not within such jurisdiction, the court may appoint some proper person to execute such new deed.

**History:** 1877, Act 71, Eff. Aug. 21, 1877;—How. 5719;—CL 1897, 9033;—CL 1915, 11768;—CL 1929, 13348;—CL 1948, 565.332.

**565.333 Notice of application; personal service, publication.**

Sec. 3. No conveyance shall be made under this act, excepting upon notice of the application, which notice shall be by personal service thereof, except where the opposite party or parties are non-residents of the state, in which latter case, the court may order publication of such notice in 1 or more newspapers published in the county where the court may be held and the land may be situated, for such time as the court may order, not less than once a week for 4 successive weeks.

**History:** 1877, Act 71, Eff. Aug. 21, 1877;—How. 5720;—CL 1897, 9034;—CL 1915, 11769;—CL 1929, 13349;—CL 1948, 565.333.

## **LAND CONTRACTS**

### **Act 237 of 1879**

AN ACT to provide for the execution, acknowledgment, and recording of contracts for the sale of land.

**History:** 1879, Act 237, Eff. Aug. 30, 1879.

*The People of the State of Michigan enact:*

#### **565.351 Land contract; acknowledgment; endorsement.**

Sec. 1. A contract for the sale of land or any interest in that land shall be executed by the vendor named in the contract, and acknowledged before any judge or before any notary public within this state, and the officer taking the acknowledgment shall endorse a certificate of the acknowledgment and the date of making the acknowledgment under his or her hand.

**History:** 1879, Act 237, Eff. Aug. 30, 1879;—How. 5709;—CL 1897, 9035;—CL 1915, 11770;—CL 1929, 13350;—CL 1948, 565.351;—Am. 1991, Act 140, Imd. Eff. Nov. 25, 1991;—Am. 2002, Act 20, Imd. Eff. Mar. 4, 2002.

#### **565.352 Land contract; execution and acknowledgment in another state.**

Sec. 2. If any such contract be executed in any other state, district or territory, the same shall be executed and acknowledged in the same manner as provided in section 9 of chapter 150 of the Compiled Laws of 1871, for the execution of deeds in any other state, district, or territory.

**History:** 1879, Act 237, Eff. Aug. 30, 1879;—How. 5710;—CL 1897, 9036;—CL 1915, 11771;—CL 1929, 13351;—CL 1948, 565.352.

**Compiler's note:** For provisions of section 9, referred to in this section, see § 565.9.

#### **565.353 Land contract; execution and acknowledgment in foreign country.**

Sec. 3. If any such contract be executed in any foreign country, it may be executed and acknowledged according to the provisions contained in section 11 of chapter 150 Compiled Laws of 1871, providing for the execution of deeds in any foreign country.

**History:** 1879, Act 237, Eff. Aug. 30, 1879;—How. 5711;—CL 1897, 9037;—CL 1915, 11772;—CL 1929, 13352;—CL 1948, 565.353.

**Compiler's note:** For provisions of section 11, referred to in this section, see § 565.11.

#### **565.354 Land contract; recording, effect.**

Sec. 4. Any contract executed and acknowledged, according to the foregoing provisions, shall, with the certificates [certificate] thereto attached, be entitled to be recorded in the office of the register of deeds of the county where the lands lie, and the recording of the same shall have the same force and effect, as to subsequent encumbrancers and purchasers, as the recording of deeds and mortgages as now provided by law.

**History:** 1879, Act 237, Eff. Aug. 30, 1879;—How. 5712;—CL 1897, 9038;—CL 1915, 11773;—CL 1929, 13353;—CL 1948, 565.354.

#### **565.355 Repealed. 1998, Act 106, Imd. Eff. June 3, 1998.**

**Compiler's note:** The repealed section pertained to refusal to discharge land contract.

#### **565.356 Definitions.**

Sec. 6. As used in this act:

(a) "Assignee" means assignee of the vendor named in a land contract, a succeeding assignee, or a land contract mortgagee who became the absolute holder of the land contract as a result of security enforcement procedures.

(b) "Grantee" means grantee of the vendor named in a land contract, a succeeding grantee, or a grantee pursuant to a mortgage foreclosure of a mortgage upon the land but subordinate to the land contract.

(c) "Land contract mortgage" means a mortgage granted by a vendor or a vendee.

(d) "Land contract mortgagee" means the holder of a land contract mortgage granted by a vendor or vendee, or his or her heirs, successors, or assigns.

(e) "Nonmortgaging vendee" means a vendee who has not entered into a land contract mortgage granted by his or her vendor.

(f) "Nonmortgaging vendor" means a vendor who has not entered into a land contract mortgage granted by his or her vendee.

(g) "Real estate mortgage" means a mortgage granted upon an interest in real property, other than a mortgage upon a vendor's or vendee's interest in a land contract unless the vendor and the vendee join in or



subject their respective interests to a single mortgage. A land contract mortgage is not a real estate mortgage.

(h) "Third parties" means persons or entities other than the vendor, vendee, nonmortgaging vendor, nonmortgaging vendee, assignee, grantee, or land contract mortgagee, who have or claim an interest in or encumbrance upon real property or a vendor's or vendee's interest which is subject to a land contract mortgage.

(i) "Vendee" means the vendee named in the land contract and the vendee's heirs, successors, or assigns.

(j) "Vendor" means the vendor named in the land contract and the vendor's heirs, successors, or assigns.

**History:** Add. 1998, Act 106, Imd. Eff. June 3, 1998;—Am. 2002, Act 147, Imd. Eff. Apr. 2, 2002.

#### **565.357 Land contract mortgage as security to debt or obligation; rights and interests of vendor or vendee; encumbrance; applicability of act to real estate mortgage; act additional to existing rights and remedies.**

Sec. 7. (1) A vendor or a vendee under a land contract may grant a land contract mortgage to secure any debt or obligation that may be secured by a real estate mortgage. This subsection does not alter the effect of any contractual provisions which prohibit or result in a default upon the mortgage, sale, assignment, or further encumbrance of a vendor's or vendee's interest in a land contract which would otherwise be enforceable.

(2) For the purposes of sections 6 to 11, the respective interests of a vendor or a vendee subject to a land contract mortgage includes all of the respective rights of a vendor or vendee including, without limitation, the vendor's rights to payments and the vendee's rights to conveyance. For the purposes of sections 6 to 11, the interests of vendors and vendees subject to a land contract mortgage are real property interests.

(3) Unless otherwise provided by the parties, a land contract mortgage encumbers all of the vendor's or vendee's interests that are mortgaged, whether real, personal, or mixed, in the same manner and to the same extent as a real estate mortgage.

(4) This act does not apply to real estate mortgages unless the parties otherwise agree.

(5) This act is in addition to existing rights and remedies at law with respect to the financing and encumbering of the vendor's and vendee's interests in land contracts.

**History:** Add. 1998, Act 106, Imd. Eff. June 3, 1998.

#### **565.358 Land contract mortgage; document; form; execution, acknowledgement, and recording; identification of encumbered interest; perfection of mortgage; priority.**

Sec. 8. (1) Any document that would be sufficient to constitute a real estate mortgage upon an interest in real property shall constitute a land contract mortgage upon the vendor's or vendee's interest.

(2) A land contract mortgage shall be in a form and shall be executed, acknowledged, and recorded in the same manner as provided for real estate mortgages.

(3) A land contract mortgage need not specifically identify the interest encumbered as a vendor's or vendee's interest.

(4) A land contract mortgage that is recorded in the manner provided for real estate mortgages is perfected for all purposes, without filing, under the uniform commercial code, 1962 PA 172, MCL 440.1101 to 440.11102, any notice to the nonmortgaging vendor or the nonmortgaging vendee or the taking of possession of the original land contract document or otherwise. A land contract mortgage perfected in accordance with this section takes priority as a matter of law over all other mortgages, liens, security, or other interests in such vendor's or vendee's interests except those as to which a real estate mortgage would be subordinate.

**History:** Add. 1998, Act 106, Imd. Eff. June 3, 1998.

#### **565.359 Land contract mortgage; enforcement; foreclosure; additional remedies.**

Sec. 9. (1) A land contract mortgage may be enforced in accordance with any existing procedure for the enforcement of a real estate mortgage, including, without limitation, foreclosure by advertisement and judicial foreclosure. Upon completion of a foreclosure by advertisement or judicial foreclosure of a land contract mortgage and the expiration of the applicable redemption period, the successful bidder at foreclosure shall succeed to all of the mortgaged interests of the respective foreclosed vendor or vendee.

(2) Other rights and remedies that may be available to a real estate mortgagee, including, without limitation, future advance mortgages, assignments of rents, or receiverships may, in a proper case, be applied in favor of a land contract mortgagee.

(3) All remedies that existed before the effective date of sections 6 to 11 shall continue to apply. However, a land contract mortgage made pursuant to this act may, at the option of the land contract mortgagee, also be enforced as provided in this act.

**History:** Add. 1998, Act 106, Imd. Eff. June 3, 1998.

**565.360 Nonmortgaging vendor or vendee; rights or remedies affected; duties; payments; conditions; duties of third party.**

Sec. 10. (1) A land contract mortgage shall not, absent voluntary subordination as provided by law, encumber or otherwise affect the rights or remedies of the nonmortgaging vendor or the nonmortgaging vendee except as otherwise provided in subsection (2) or (3).

(2) If the vendee's interest is encumbered by a recorded land contract mortgage, the nonmortgaging vendor shall do all of the following:

(a) Provide the same notices with respect to the remedies of forfeiture and foreclosure to the land contract mortgagee as are required to be provided to the vendee.

(b) Name the land contract mortgagee as a party in interest in any legal proceeding, the effect of which would be to terminate the vendee's interest, and thus the land contract mortgagee's lien.

(c) Accept from the land contract mortgagee any cure of any default that the nonmortgaging vendor would be obligated to accept from the vendee.

(3) A nonmortgaging vendee, when the vendor's interest has been subjected to a land contract mortgage, shall continue to make payments in accordance with the land contract's terms to the vendor or assignee until any of the following occur:

(a) Notice to the vendee of the completion of foreclosure and the expiration, without redemption, of the applicable redemption period with respect to the land contract mortgage, after which all payments shall be made to the successful bidder at the foreclosure, or the successful bidder's heirs, successors, and assigns. However, if the vendee has actual notice of the foreclosure sale, installment payments shall be made during the redemption period as provided in section 6058 of the revised judicature act of 1961, 1961 PA 236, MCL 600.6058.

(b) If the land contract mortgage contains a collateral assignment of the payments of the vendee under the land contract, delivery to the vendee of a notice of default signed under oath by the land contract mortgagee asserting that a default exists under the land contract mortgage together with a copy of the recorded land contract mortgage containing the collateral assignment and a demand that all further payments under the land contract be made to the land contract mortgagee, after which all payments shall thereafter be made in accordance with that notice.

(4) A third party asserting a prior lien or interest to that of a land contract mortgagee whose land contract mortgage has been recorded shall do all of the following:

(a) Provide to the land contract mortgagee copies of all notices that must be provided to the vendor or vendee as a prerequisite to the assertion or enforcement of the third party rights or remedies, but only to the extent that those notices would be required to be provided if the vendor or vendee were the fee owner of the real property and the land contract mortgage were a mortgage upon the fee.

(b) Name the land contract mortgagee as a party in interest in any legal proceeding, the effect of which would be to terminate, assert, or enforce a prior lien or encumbrance upon the vendor's or vendee's interest that is subject to the land contract mortgage.

(c) Accept from the land contract mortgagee any payment, performance, or cure that the third party would be obligated to accept from the vendor or the vendee.

**History:** Add. 1998, Act 106, Imd. Eff. June 3, 1998.

**565.361 Payment and performance of contract obligations; conveyance of land; discharge of land contract mortgage or release of security assignment; failure or refusal to make conveyance or discharge; penalties; enforcement; title as marketable; subordination to other real estate interest.**

Sec. 11. (1) When the vendee named in a land contract, or his or her heirs, successors, or assigns, has fully paid and performed the obligations under the contract that are a precondition to the sale and conveyance of the land, the vendor named in the contract shall make conveyance of the land to the vendee by a deed of conveyance as specified in the land contract, or, if the form of the deed is not specified in the land contract, by an appropriate deed. Until the vendor named in the contract has ceased in law to be bound by the provisions of the contract, the obligation to convey the land remains a continuing executory obligation on the part of the vendor.

(2) The vendor named in the land contract who has assigned his or her interest in the contract or sold or mortgaged the land subject to the contract, whether absolutely or as collateral security, shall remain fully obligated to deliver a deed of conveyance as provided in subsection (1). However, if the assignee assumed the conveying obligation of the vendor, the original vendor is only secondarily liable for that obligation.

(3) When the vendee named in a land contract, or his or her heirs, successors, or assigns, has fully paid and performed the obligations that are a precondition to the sale and conveyance of the land subject to the contract, the assignee and all succeeding assignees, including the holder of a land contract vendor's interest who has become the absolute holder of that interest as a result of security enforcement procedures after an assignment of the vendor's interest as collateral security, and the grantee, and all succeeding grantees including any grantee pursuant to a mortgage foreclosure regarding a mortgage made upon the land but subject to the land contract in any deed of the land given subject to the land contract by the vendor, shall make the conveyance of the land to the vendee. The conveyance shall be made as specified in the land contract if the vendor's assignee or grantee has assumed the vendor's continuing executory conveyancing obligation, or by quitclaim deed if the vendor's assignee or grantee has not assumed the vendor's conveyancing obligation. However, an assignee named in the contract who has not assumed the conveyancing obligation of the vendor and who has reassigned the entire vendor's interest and, therefore, retains no further interest, whether absolute or as security, has no obligation to provide a deed of conveyance.

(4) When the vendee named in the land contract, or his or her heirs, successors, or assigns, has fully paid and performed the obligations under the contract that are a precondition to the sale and conveyance of the land, the land contract mortgagee under any land contract mortgage of the land made by the vendor subject to the land contract, or the assignee of any assignment for collateral security purposes of the vendor's interest under the land contract, shall execute a discharge of the land contract mortgage or a release of the security assignment in the same manner as now provided by law for the discharge of mortgages.

(5) When the vendor named in the land contract has ceased in law to be bound by the provisions of the contract, and is entitled to a release from the contract, the vendee named in the contract, or his or her heirs, successors, or assigns, including, without limitation, any land contract mortgagees or other parties claiming a lien or security interest upon or in the vendee's interests in the contract, shall, when requested by the vendor, execute a discharge of the contract in the same manner as now provided by law for the discharge of mortgages.

(6) A person who is required under this section to enter into a conveyance or discharge and who fails or refuses to make the conveyance or discharge is subject to the same penalties, and to any other penalties or remedies existing before the effective date of this act, as are now provided by law for a refusal to discharge a real estate mortgage after the real estate mortgage has been fully paid. The party entitled to the conveyance or discharge may enforce the conveyance or discharge as provided in section 44 of 1846 RS 65, MCL 565.44, for enforcing the discharge of mortgages. The petition or bill asking for the discharge shall contain all the material averments regarding the matter as required by that section in regard to mortgages, as applicable to land contracts. However, a land contract is not invalid for want of acknowledgment or recording.

(7) This section does not render a title unmarketable if that title would otherwise have been marketable.

(8) For the purposes of this act, a mortgage, deed, or land contract is subject to another real estate interest if, by its terms or by an independent voluntary subordination, it is subordinate to the other real estate interest or, as a matter of law, it would be automatically subordinate to the other real estate interest.

**History:** Add. 1998, Act 106, Imd. Eff. June 3, 1998.

**FRAUDULENT CONVEYANCES**  
**Act 98 of 1883**

AN ACT to punish persons who procure or place upon record spurious or fraudulent conveyances of real estate, with intent to deceive.

**History:** 1883, Act 98, Eff. Sept. 8, 1883.

*The People of the State of Michigan enact:*

**565.371 Recording fraudulent conveyance of realty; penalty.**

Sec. 1. That whoever procures or places upon record any conveyance of real estate, with intent to deceive any person as to the identity of the grantor mentioned in such conveyance, shall upon conviction be punished by imprisonment in the state prison at hard labor, not to exceed 3 years, or by a fine not exceeding 5,000 dollars, or both, in the discretion of the court.

**History:** 1883, Act 98, Eff. Sept. 8, 1883;—How. 9234a;—CL 1897, 11687;—CL 1915, 15461;—CL 1929, 13355;—CL 1948, 565.371.

**RECORDING AFFIDAVIT OF RENEWAL OF MORTGAGE**  
**Act 216 of 1929**

AN ACT to provide for the recording after the due date thereof of affidavits for renewal of real estate mortgages; to establish the legal effect thereof and to provide that real estate mortgages not renewed by affidavit or extension agreement within a certain period after recording, shall be considered as discharged.

**History:** 1929, Act 216, Imd. Eff. May 20, 1929;—Am. 1951, Act 8, Eff. Sept. 28, 1951.

*The People of the State of Michigan enact:*

**565.381 Affidavit of mortgage renewal; recording.**

Sec. 1. The register of deeds of each county shall provide, at the expense of the county, books of record for the recording of affidavits of renewal of real estate mortgages, and shall record therein such affidavits when presented for that purpose when accompanied by a fee therefor at the same rate as for other instruments.

**History:** 1929, Act 216, Imd. Eff. May 20, 1929;—CL 1929, 13356;—CL 1948, 565.381.

**565.382 Affidavit of mortgage renewal; time limitation, effect.**

Sec. 2. Every mortgage not renewed by the affidavit of the owner or 1 of the owners thereof, or by the affidavit of the agent or attorney of the owner or owners, showing the amount remaining unpaid on said mortgage, or by extension agreement, filed in the office of the register of deeds of the county in which the lands are situated which are covered by said mortgage, within 30 years after the due date as set forth in said mortgage, or when no due date is set forth in said mortgage, then within 30 years after the recording of said mortgage, shall be considered as discharged.

**History:** 1929, Act 216, Imd. Eff. May 20, 1929;—CL 1929, 13357;—CL 1948, 565.382;—Am. 1951, Act 8, Eff. Sept. 28, 1951.

**565.383 Effective date for preceding section.**

Sec. 3. The operation of section 2 of this act shall be deferred for 3 months after the taking effect of the act in general.

**History:** 1929, Act 216, Imd. Eff. May 20, 1929;—CL 1929, 13358;—CL 1948, 565.383.

**565.384 Mortgage tax; effect of act.**

Sec. 4. Nothing contained in this act shall be construed to require the payment of a mortgage tax by reason of the recording of any affidavit of renewal.

**History:** 1929, Act 216, Imd. Eff. May 20, 1929;—CL 1929, 13359;—CL 1948, 565.384.

**RECORDING WAIVER OF PRIORITY OF MORTGAGE**  
**Act 236 of 1929**

AN ACT to provide for the recording of waivers of priority of mortgages, and to make such record thereof constructive notice to all persons dealing with mortgages, the lien of which has been waived and with the property described in said mortgage; also to provide for the fees for the recording thereof.

**History:** 1929, Act 236, Eff. Aug. 28, 1929.

*The People of the State of Michigan enact:*

**565.391 Waiver of mortgage priority; recording, fees.**

Sec. 1. When any mortgagee named in any mortgage of property within this state, or the party or parties to whom such mortgage has been properly assigned of record, desire to waive the priority of said mortgage in favor of any other lien or mortgage, the holder thereof may in writing on said mortgage, or by separate instrument duly acknowledged and witnessed in the same manner as is provided for deeds and other instruments for the transfer of an interest in real estate, waive the priority of said mortgage in favor of any other mortgage or lien, to the extent of the lien of the mortgage so waived and such waiver when recorded whether upon the margin of the record, or as a separate instrument, shall be constructive notice thereof to all persons dealing with the mortgage, the lien of which has been so waived, or with property described in said mortgage, from the date of filing said waiver for record. If said waiver be a separate instrument, it shall be recorded in the same manner provided for the recording of discharges of mortgages, and the recorder shall be entitled to the same fees for recording waivers of priority as are charged for assignments and discharges of mortgages.

**History:** 1929, Act 236, Eff. Aug. 28, 1929;—CL 1929, 13360;—CL 1948, 565.391.

**RECORDING JUDGMENT AFFECTING TITLE TO REALTY**  
**Act 5 of 1873**

AN ACT to provide for the recording of judgments in actions affecting or relating to the title of real estate.

**History:** 1873, Act 5, Eff. July 31, 1873.

*The People of the State of Michigan enact:*

**565.401 Judgment relating to realty title; copy recordation, effect.**

Sec. 1. That whenever any final judgment shall have been rendered in any suit or action at law, affecting or relating to the title of real estate, by any court having competent jurisdiction thereof, a copy of such judgment, duly certified by the clerk of said court, under the seal thereof, may be received and recorded in the office of the register of deeds for the county where such real estate is situated and when so recorded it shall have the same effect as evidence and notice of title as the recording of deeds and other conveyances, and such register of deeds shall be entitled, for the recording of such judgment, to the same fees as for the recording of deeds.

**History:** 1873, Act 5, Eff. July 31, 1873;—How. 7985;—CL 1897, 9043;—CL 1915, 11778;—CL 1929, 13361;—CL 1948, 565.401.



**RECORDING JUDGMENTS AND DECREES AS TO LANDS**  
**Act 107 of 1895**

AN ACT to provide for recording in the offices of registers of deeds certified copies of judgments and decrees of courts of record and making the record thereof evidence in courts, and making such records heretofore made like evidence.

**History:** 1895, Act 107, Eff. Aug. 30, 1895.

*The People of the State of Michigan enact:*

**565.411 Judgment or decree affecting realty title; copy recordation.**

Sec. 1. That whenever any circuit court, court of chancery, probate court, or other court of record in this state, shall have rendered any final judgment or decree by the terms of which any person or persons shall be decided to be the owner or owners of any land in this state described therein, or wherein any person or persons shall be determined to be the heirs and entitled to inherit the lands of any deceased owner, or whereby any lands shall be distributed, assigned or partitioned to any person or persons, a copy of such judgment or decree duly certified under the seal of such court may be recorded in the office of the register of deeds of any county or counties in which lands described in or affected by such judgment or decree shall be situated.

**History:** 1895, Act 107, Eff. Aug. 30, 1895;—Am. 1897, Act 133, Eff. Aug. 30, 1897;—CL 1897, 9044;—CL 1915, 11779;—CL 1929, 13362;—CL 1948, 565.411.

**565.412 Recording fee; disposal.**

Sec. 2. Every register of deeds shall be entitled to the same fee for recording such certified copy as by law he may receive for recording conveyances: Provided, That in counties where the register of deeds receives an annual salary, he shall turn over all such fees to the county treasurer.

**History:** 1895, Act 107, Eff. Aug. 30, 1895;—CL 1897, 9045;—CL 1915, 11780;—CL 1929, 13363;—CL 1948, 565.412.

**RECORDING TRUST AGREEMENT OR CERTIFICATE OF TRUST EXISTENCE AND  
AUTHORITY  
Act 133 of 1991**

AN ACT to allow the use and recording of certain documents regarding trusts in the case of real property that is conveyed or otherwise affected by a trust; and to prescribe their effect.

**History:** 1991, Act 133, Imd. Eff. Nov. 6, 1991.

*The People of the State of Michigan enact:*

**565.431 Instrument affecting interest in real property executed pursuant to express trust; copy of trust agreement or certificate of trust existence and authority.**

Sec. 1. An instrument conveying, encumbering, or otherwise affecting an interest in real property, executed pursuant to an express trust, may be accompanied either by a copy of the trust agreement or by a certificate of trust existence and authority, as described in sections 2 and 3.

**History:** 1991, Act 133, Imd. Eff. Nov. 6, 1991.

**565.432 Certificate of trust existence and authority; contents.**

Sec. 2. A certificate of trust existence and authority shall contain all of the following information:

- (a) The title of the trust.
- (b) The date of the trust agreement and any amendments to the trust agreement.
- (c) The name of the settlor or grantor and the settlor's or grantor's address.
- (d) The names and addresses of all of the trustees and successor trustees.
- (e) The legal description of the affected real property.
- (f) Verbatim reproductions of provisions of the trust agreement, and any amendments to the trust agreement, regarding all of the following:
  - (i) The powers of the trustee or trustees relating to real property or any interest in real property and restrictions on the powers of the trustee or trustees relating to real property or any interest in real property.
  - (ii) The governing law.
  - (iii) Amendment of the trust relating to the trust provisions described in subdivision (a) to (f)(ii).
- (g) Certification that the trust agreement remains in full force and effect.
- (h) A list of names and addresses of all persons who, at the time the certificate of trust is executed, are trustees of the trust.

**History:** 1991, Act 133, Imd. Eff. Nov. 6, 1991.

**565.433 Certificate of trust existence and authority; execution; form.**

Sec. 3. A certificate of trust existence and authority shall be executed by the settlor or grantor; an attorney for the settlor, grantor, or trustee; or an officer of a banking institution or an attorney if then acting as a trustee. The certificate shall be in the form of an affidavit.

**History:** 1991, Act 133, Imd. Eff. Nov. 6, 1991.

**565.434 Trust agreement or certificate of trust existence and authority; recording.**

Sec. 4. The trust agreement or certificate of trust existence and authority, and any amendments to or revocations of the trust agreement or the certificate of trust existence and authority, may be recorded in the office of the register of deeds of each county where the lands that are the subject of or affected by the trust agreement are located.

**History:** 1991, Act 133, Imd. Eff. Nov. 6, 1991.

**565.435 Protection afforded party relying on information in recorded certificate of trust existence and authority; further examination of trust agreement.**

Sec. 5. A purchaser or other party relying upon the information contained in a recorded certificate of trust existence and authority shall be afforded the same protection as is provided to a subsequent purchaser in good faith under section 29 of chapter 65 of the Revised Statutes of 1846, being section 565.29 of the Michigan Compiled Laws, and shall not be required to further examine the trust agreement, unless an instrument amending or revoking the trust agreement or certificate of trust existence and authority is recorded in the same office in which the trust agreement or certificate of trust existence and authority was recorded.

**History:** 1991, Act 133, Imd. Eff. Nov. 6, 1991.

**565.436 Indexing of certificate of trust existence and authority.**

Sec. 6. The certificate of trust existence and authority, in addition to being indexed in any other manner required by law, shall be indexed in the records of the office of the register of deeds under the title of the trust.

**History:** 1991, Act 133, Imd. Eff. Nov. 6, 1991.

## **RECORDING AFFIDAVITS AFFECTING REAL PROPERTY**

### **Act 123 of 1915**

AN ACT to provide for the recording and use in evidence of affidavits affecting real property; and to provide a penalty for the making of false affidavits.

**History:** 1915, Act 123, Eff. Aug. 24, 1915;—Am. 1937, Act 190, Imd. Eff. July 14, 1937;—Am. 1965, Act 178, Imd. Eff. July 15, 1965.

*The People of the State of Michigan enact:*

#### **565.451 Repealed. 1965, Act 178, Imd. Eff. July 15, 1965.**

**Compiler's note:** The repealed section pertained to affidavits as to parties to instruments, recording, and perjury.

#### **565.451a Affidavit stating facts relating to matters affecting realty; recording.**

Sec. 1a. An affidavit stating facts relating to any of the following matters which may affect the title to real property in this state made by any person having knowledge of the facts or by any person competent to testify concerning such facts in open court, may be recorded in the office of the register of deeds of the county where the real property is situated:

(a) Birth, age, sex, marital status, death, name, residence, identity, capacity, relationship, family history, heirship, homestead status and service in the armed forces of parties named in deeds, wills, mortgages and other instruments affecting real property;

(b) Knowledge of the happening of any condition or event which may terminate an estate or interest in real property;

(c) Knowledge of surveyors duly registered under the laws of this state with respect to the existence and location of monuments and physical boundaries, such as fences, streams, roads and rights of way of real property;

(d) Knowledge of such registered surveyors reconciling conflicting and ambiguous descriptions in conveyances with descriptions in a regular chain of title;

(e) Knowledge of facts incident to possession or the actual, open, notorious and adverse possession of real property; or

(f) Knowledge of the purchaser, or in the case of a corporation, of its president, vice president, secretary or other duly authorized representative acting in a fiduciary or representative capacity, of real property sold upon foreclosure or conveyed in lieu of foreclosure of a trust mortgage or deed of trust securing an issue of bonds or other evidences of indebtedness, or of any mortgage, land contract or other security instrument held by a fiduciary or other representative, as to the authority of such purchaser to purchase the real property and as to the terms and conditions upon which the real property is to be held and disposed of.

**History:** Add. 1965, Act 178, Imd. Eff. July 15, 1965.

#### **565.451b Affidavit stating facts relating to matters affecting realty; perjury.**

Sec. 1b. Any person who knowingly makes any false statement in an affidavit is guilty of perjury.

**History:** Add. 1965, Act 178, Imd. Eff. July 15, 1965.

#### **565.451c Affidavit stating fact relating to matters affecting realty; land description.**

Sec. 1c. The affidavit shall include a description of the land, title to which may be affected by facts stated in the affidavit. If there appears in the regular chain of title of the land a deed, will, mortgage or other instrument affecting the title which contains a full and adequate description of the land, the description may be incorporated in the affidavit by reference to the record of the instrument in the register of deeds office in lieu of including the full description of the land.

**History:** Add. 1965, Act 178, Imd. Eff. July 15, 1965.

#### **565.452 Affidavit; register duties, fees.**

Sec. 2. The register of deeds of the county where the affidavit is offered for record shall receive and record it in the manner that deeds are recorded. The register of deeds shall collect the same fee for recording the affidavit as is provided by law for recording deeds.

**History:** 1915, Act 123, Eff. Aug. 24, 1915;—CL 1915, 11737;—CL 1929, 13365;—CL 1948, 565.452;—Am. 1965, Act 178, Imd. Eff. July 15, 1965.

#### **565.453 Affidavit; use as evidence.**

Sec. 3. The affidavit, whether recorded before or after the passage of this act, may be received in evidence in any civil cause, in any court of this state and by any board or officer of the state in any suit or proceeding affecting the real estate and shall be prima facie evidence of the facts and circumstances therein contained.

**History:** 1915, Act 123, Eff. Aug. 24, 1915;—CL 1915, 11738;—CL 1929, 13366;—CL 1948, 565.453;—Am. 1965, Act 178, Imd. Eff. July 15, 1965.

**DISCHARGE OF LIENS ON REAL ESTATE**  
**Act 172 of 1893**

**565.481, 565.482 Repealed. 1980, Act 497, Eff. Mar. 1, 1982.**

**RECORDING OF DEEDS, MORTGAGES, AND INSTRUMENTS OF RECORD**  
**Act 20 of 1867**

AN ACT relative to recording deeds, mortgages and instruments of record, and to declare the effect thereof.

**History:** 1867, Act 20, Eff. June 27, 1867.

*The People of the State of Michigan enact:*

**565.491 Instruments recordation; reproductions; delivery.**

Sec. 1. A register of deeds, upon the payment of the proper fee, shall record or cause to be recorded, at length, upon the pages of the proper record books in his or her office reproductions pursuant to the records media act of all deeds, mortgages, maps, and instruments or writings authorized by law to be recorded in his or her office, and left with him or her for that purpose. If the register of deeds receives an instrument to be recorded, he or she shall not deliver it to the parties, or either of them, or permit the instrument to go out of his or her office before it is duly entered at large upon the record.

**History:** 1867, Act 20, Eff. June 27, 1867;—CL 1871, 4254;—How. 5677;—CL 1897, 8982;—Am. 1911, Act 122, Eff. Aug. 1, 1911;—CL 1915, 11714;—Am. 1921, Act 379, Eff. Aug. 18, 1921;—CL 1929, 13372;—CL 1948, 565.491;—Am. 1992, Act 211, Imd. Eff. Oct. 5, 1992.

**565.492 Conveyance made under court order; indexing, record as evidence.**

Sec. 2. When a deed or other conveyance made by an executor, administrator, guardian, commissioner, sheriff, marshal or person acting under authority of an order of court, is left for record, the register of deeds shall enter in the indexes of the officer or person the names of the testators, wards or persons who owned the estate, and from whom it passes when the same appear by such deed, and also the name of such executor, administrator, guardian, commissioner, sheriff, marshal, or other person executing the same; and when a decree or order for the partition of land, or the commissioner return thereof, is so left for record, the register shall enter in the indexes the names of all the persons whose estates plainly appear to be affected thereby. And all such deeds, the record, or a certified copy of such record, shall be in all courts and places prima facie evidence of the regularity of all the proceedings required by law anterior to such deeds, and of the authority of the grantor therein named to execute such deed or deeds.

**History:** 1867, Act 20, Eff. June 27, 1867;—CL 1871, 4255;—How. 5678;—CL 1897, 8983;—CL 1915, 11715;—CL 1929, 13373;—CL 1948, 565.492.

**GENERAL INDEX OF RECORDS**  
**Act 79 of 1841**

AN ACT to provide for making a general index to all books in the offices of the registers of deeds, of the respective counties of this state.

**History:** 1841, Act 79, Eff. May 13, 1841.

*Be it enacted by the Senate and House of Representatives of the State of Michigan:*

**565.501 General index of records; duties and compensation of register.**

Sec. 1. That the county commissioners of the respective counties of this state, be, and they are hereby authorized, if in the opinion of the commissioners they shall deem it necessary, to cause the registers of their respective counties, to prepare a general index to all books in their offices, used for the purpose of recording deeds, mortgages and other instruments, in order that the records containing the title of lands, may the more easily be preserved, and a search of said records, to ascertain such title, facilitated; and the said registers shall receive for their compensation such sum as the county commissioners may deem just and right.

**History:** 1841, Act 79, Eff. May 13, 1841;—CL 1857, 2770;—CL 1871, 4267;—How. 5722;—CL 1897, 9058;—CL 1915, 11789;—CL 1929, 13374;—CL 1948, 565.501.

**Compiler's note:** The office of county commissioners was abolished and its powers and duties transferred to the county boards of supervisors by Act 19 of 1842.

**565.502 General index of records; compensation of register for indexing instruments.**

Sec. 2. That no compensation shall be allowed for indexing in the general index, deeds, mortgages and other instruments, that shall be left for record after the general index books shall be furnished to the registers of the respective counties, or when said books may have been already furnished, and the registers are hereby required without charge, to index all such deeds, mortgages, and other instruments in said general index.

**History:** 1841, Act 79, Eff. May 13, 1841;—CL 1857, 2771;—CL 1871, 4268;—How. 5723;—CL 1897, 9059;—CL 1915, 11790;—CL 1929, 13375;—CL 1948, 565.502.



**FAILURE TO KEEP UP REQUIRED INDEXES**  
**Act 158 of 1887**

AN ACT providing for the forfeiture by every register of deeds in this state who shall neglect or refuse to keep up such indexes as are required by law, and for the recovery of the same.

**History:** 1887, Act 158, Eff. Sept. 28, 1887.

*The People of the State of Michigan enact:*

**565.531 Index; failure to keep up; forfeiture.**

Sec. 1. That every register of deeds who shall neglect or refuse to keep up such indexes as are required by law shall forfeit the sum of 10 dollars for each and every such neglect or refusal, which may be recovered in an action of debt before any court of competent jurisdiction.

**History:** 1887, Act 158, Eff. Sept. 28, 1887;—How. 5723a;—CL 1897, 9060;—CL 1915, 11791;—CL 1929, 13376;—CL 1948, 565.531.

## INSPECTION OF RECORDS AND FILES

### Act 54 of 1875

An act to facilitate the inspection and reproduction of the records and files in the offices of the registers of deeds.

**History:** 1875, Act 54, Imd. Eff. Mar. 26, 1875;—Am. 1992, Act 112, Imd. Eff. June 26, 1992.

*The People of the State of Michigan enact:*

#### **565.551 Records of register of deeds; inspection and examination; reproduction.**

Sec. 1. (1) A register of deeds shall furnish proper and reasonable facilities for the inspection and examination of the records and files in his or her office, and for making memorandums or transcripts from the records and files during the usual business hours, to an individual having a lawful purpose to examine the records and files. However, the custodian of the records and files may make reasonable rules and regulations with reference to the inspection and examination of the records and files as is necessary to protect the records and files and to prevent interference with the regular discharge of the duties of the register of deeds.

(2) If an individual requests a reproduction of a record or file of a register of deeds, the register of deeds shall do 1 of the following, at the register of deeds' option:

(a) Reproduce the record or file for the individual pursuant to the records media act, Act No. 116 of the Public Acts of 1992, being sections 24.401 to 24.403 of the Michigan Compiled Laws, using a medium selected by the register of deeds. Unless a different fee is provided for by law, the fee for a reproduction under this subdivision other than a paper copy shall not exceed the reasonable costs to the register of deeds.

(b) Provide equipment for the individual to reproduce the record or file pursuant to Act No. 116 of the Public Acts of 1992, using a medium selected by the register of deeds. Unless a different fee is provided for by law, the fee for a reproduction under this subdivision other than a paper copy shall not exceed the reasonable costs to the register of deeds.

(c) Authorize the individual to reproduce the record or file on the premises using equipment provided by that individual. This subdivision does not apply unless the individual requests authorization to reproduce the record or file using equipment provided by that individual.

(3) A register of deeds may prohibit the reproduction of an instrument temporarily left with the register of deeds to be recorded in the register of deeds' office.

**History:** 1875, Act 54, Imd. Eff. Mar. 26, 1875;—How. 5721;—CL 1897, 9053;—CL 1915, 11786;—CL 1929, 13377;—Am. 1931, Act 112, Eff. Sept. 18, 1931;—CL 1948, 565.551;—Am. 1992, Act 112, Imd. Eff. June 26, 1992;—Am. 1994, Act 51, Imd. Eff. Mar. 31, 1994.

**RECORDS OF DEEDS AND OTHER CONVEYANCES**  
**Act 25 of 1836**

AN ACT concerning the records of deeds and other conveyances of land.

**History:** 1836, Act 25, Imd. Eff. Mar. 24, 1836.

*Be it enacted by the Senate and House of Representatives of the State of Michigan:*

**565.581 County attached to another for judicial purposes; record of instruments; copying, copy as evidence.**

Sec. 1. That the board of supervisors or a majority of them, of all such organized counties as have been attached to other counties for judicial purposes, are hereby authorized to direct the register of deeds of their county, either in person or by deputy, to provide a good and sufficient book or books, and procure and record therein a complete copy of all such deeds, mortgages, powers of attorney or other instruments relating to the title of land as may belong to their county and on record in the county to which it had been so attached; and it shall be the duty of said register or deputy under his oath of office to certify each and every copy so taken to be a true copy of the original record; and such copy so certified shall be received as evidence in all courts of justice in this state, in the same manner and for the same purposes as the original record would be received.

**History:** 1836, Act 25, Imd. Eff. Mar. 24, 1836;—CL 1857, 2766;—CL 1871, 4259;—How. 5694;—CL 1897, 9000;—CL 1915, 11732;—CL 1929, 13378;—CL 1948, 565.581.

**565.582 Application of preceding section.**

Sec. 2. All counties that now are or may hereafter be organized shall have all the rights and privileges specified in the first section of this act.

**History:** 1836, Act 25, Imd. Eff. Mar. 24, 1836;—CL 1857, 2767;—CL 1871, 4260;—How. 5695;—CL 1897, 9001;—CL 1915, 11733;—CL 1929, 13379;—CL 1948, 565.582.

**565.583 Register; duties, fees.**

Sec. 3. It shall be the duty of the register of the county applying for a copy of records to transcribe the same in the book or books to be provided for that purpose as aforesaid; and the said register shall receive for his services the fees allowed to registers for recording deeds, to be paid out of the county treasury; and the register to whom application may be made as aforesaid is hereby authorized and directed to permit the register first mentioned in this section to have the use of the books and records in his office for the purpose aforesaid.

**History:** 1836, Act 25, Imd. Eff. Mar. 24, 1836;—CL 1857, 2768;—CL 1871, 4261;—How. 5696;—CL 1897, 9002;—CL 1915, 11734;—CL 1929, 13380;—CL 1948, 565.583.

**565.584 Register; additional compensation.**

Sec. 4. The supervisors are authorized and directed to make such further compensation to the register who may transcribe such record as may be proper and just.

**History:** 1836, Act 25, Imd. Eff. Mar. 24, 1836;—CL 1857, 2769;—CL 1871, 4262;—How. 5697;—CL 1897, 9003;—CL 1915, 11735;—CL 1929, 13381;—CL 1948, 565.584.

**TRANSCRIBING RECORDS OF DEEDS, MORTGAGES, AND OTHER INSTRUMENTS**  
**Act 177 of 1879**

AN ACT to provide for the transcribing of records of deeds, mortgages and other instruments in certain cases.

**History:** 1879, Act 177, Eff. Aug. 30, 1879.

*The People of the State of Michigan enact:*

**565.591 Failure or mistake in copying records for new county; copy of original; right to obtain, recording.**

Sec. 1. That when a new county has been, or shall be organized, in whole or in part, from an organized county, or from territory attached to such organized county for judicial purposes, and the supervisors of such new county have or shall have neglected to cause copies or transcripts of the records of deeds, mortgages or other instruments relating to real estate in such new county, to be made as provided by law; or if from any cause the same has not, or shall not have been done; or in case there are or shall be informalities, irregularities or mistakes in the copying, transcribing or certifying of such records, then in either such case, any person may procure from the register of deeds of the county in which such original deed, mortgage or other instrument had been recorded, a copy, duly certified by such register, of the original record of any deed, mortgage or other instrument relative to or affecting the title of land, in which such person may be interested, and situated in such new county, and cause such certified copy to be recorded in the office of the register of deeds of the proper county. When any such certified copy shall be presented to the register of deeds of any county in this state, it shall be the duty of such register to record the same in the same manner and with like effect as original instruments or papers entitled to record in his office, and when so recorded, such record shall have the same effect in all respects as original records.

**History:** 1879, Act 177, Eff. Aug. 30, 1879;—How. 5698;—CL 1897, 9004;—CL 1915, 11739;—CL 1929, 13382;—CL 1948, 565.591.

## CONFIRMATION OF CERTAIN DEEDS AND INSTRUMENTS

### Act 21 of 1861

AN ACT to confirm deeds and instruments intended for the conveyance of real estate in certain cases.

**History:** 1861, Act 21, Imd. Eff. Feb. 2, 1861.

*The People of the State of Michigan enact:*

#### **565.601 Deed executed according to law of place of execution; validity.**

Sec. 1. That all deeds of lands situated within this state, heretofore or hereafter made without this state, and executed according to the laws of the place where made, and acknowledged to be the free act of the grantor or grantors therein named, before any person authorized to take the acknowledgment of deeds by the laws of the place where executed, or of the laws of the territory or state of Michigan, in force at the date of such acknowledgment, shall be deemed between the parties thereto, and all persons claiming under or through them, as valid and effectual to convey the legal estate of the premises therein described, as if the said deed had been in all respects legally executed.

**History:** 1861, Act 21, Imd. Eff. Feb. 2, 1861;—CL 1871, 4250;—How. 5724;—CL 1897, 9048;—CL 1915, 11781;—CL 1929, 13383;—CL 1948, 565.601.

#### **565.602 Married woman's joint deed with husband; validity.**

Sec. 2. All deeds of lands situated in this state, heretofore or hereafter made by any married woman jointly with her husband by their attorney in fact, under a joint power of attorney, executed and acknowledged as required in the joint deed of a husband and wife, and recorded in the office of the register of deeds of the proper county, shall be taken and deemed as between the parties thereto, and all persons claiming under or through them as valid and effectual to convey the legal title of the premises therein described, as if the same had been executed and acknowledged by the husband and wife in person.

**History:** 1861, Act 21, Imd. Eff. Feb. 2, 1861;—CL 1871, 4251;—How. 5725;—CL 1897, 9049;—CL 1915, 11782;—CL 1929, 13384;—CL 1948, 565.602.

#### **565.603 Certificate of acknowledgment; effect of imperfection.**

Sec. 3. No deed of lands situate in this state heretofore or hereafter executed, shall be deemed defective by reason of any informality or imperfection in the certificate of acknowledgment, if it shall sufficiently appear by such certificate that the person making the same was legally authorized to take such acknowledgment, and that the grantor or grantors named in such deed were personally known to him, and that he or they personally appeared before him and acknowledged such deed to be his or their free act, and if such deed was executed out of this state, it shall be sufficient if the certificate under the seal of office of the clerk or other proper certifying officer of the court of record of the county or district within which such acknowledgment was taken, in cases where any such certificate was required, sufficiently shows that the person before whom such acknowledgment was taken, was at the date thereof such officer as he is therein represented to be. And whenever such deed has been recorded in the office of the register of deeds of the proper county, such record shall be effectual for all purposes of a legal record, and the record of such deed or a transcript thereof may be given in evidence as in other cases: Provided, That nothing in this section, or in the preceding 2 sections contained, shall impair the rights of any person under a purchase heretofore made in good faith, and on valuable consideration.

**History:** 1861, Act 21, Imd. Eff. Feb. 2, 1861;—CL 1871, 4252;—How. 5726;—CL 1897, 9050;—CL 1915, 11783;—CL 1929, 13385;—CL 1948, 565.603.

#### **565.604 Land conveyances; statutory requirements defect; effect.**

Sec. 4. No conveyance of land or instrument intended to operate as such conveyance, made in good faith and upon a valuable consideration, whether heretofore made or hereafter to be made, shall be wholly void by reason of any defect in any statutory requisite in the sealing, signing, attestation, acknowledgment, or certificate of acknowledgment thereof; nor shall any deed or conveyance, heretofore or hereafter to be made, designed and intended to operate as a conveyance to any religious, fraternal, scientific or benevolent society, or corporation, be wholly void by reason of any mistake in the name or description of the grantee, nor because of any failure of such society or corporation to comply with any statutory provisions concerning the organization of such society or corporation: Provided, Such society or corporation shall hereafter comply with the provisions of the statute touching the organization or incorporation of such societies; but the same, when not otherwise effectual to the purposes intended, may be allowed to operate as an agreement for a proper and

lawful conveyance of the premises in question, and may be enforced specifically by suit in equity in any court of competent jurisdiction, subject to the rights of subsequent purchasers in good faith and for a valuable consideration; and when any such defective instrument has been or shall hereafter be recorded in the office of the register of deeds of the county in which such lands are situate, such record shall hereafter operate as legal notice of all the rights secured by such instrument.

**History:** 1861, Act 21, Imd. Eff. Feb. 2, 1861;—CL 1871, 4253;—Am. 1873, Act 174, Imd. Eff. Apr. 29, 1873;—How. 5727;—CL 1897, 9051;—CL 1915, 11784;—CL 1929, 13386;—Am. 1933, Act 56, Imd. Eff. Apr. 14, 1933;—CL 1948, 565.604.

**CONFIRMATION OF RECORD OF LETTERS OF ATTORNEY OR OTHER INSTRUMENT**  
**Act 191 of 1871**

AN ACT to confirm the record of letters of attorney in certain cases.

**History:** 1871, Act 191, Eff. July 18, 1871.

*The People of the State of Michigan enact:*

**565.631 Power of attorney; record as evidence of execution and acknowledgment.**

Sec. 1. That any letter of attorney or other instrument containing a power to convey lands, as agent or attorney for the owners of such lands, executed and acknowledged in the manner provided by the statutes of this state for the execution and acknowledgment of deeds or other conveyances of land, and which shall have been actually recorded in the office of the register of deeds in any county in the state prior to the first day of March in the year 1847, may be proved in any court by the production of such record or a duly certified copy thereof and such record or a duly certified copy, shall be prima facie evidence of the due execution and acknowledgment of such letter of attorney or other instrument.

**History:** 1871, Act 191, Eff. July 18, 1871;—CL 1871, 4256;—Am. 1873, Act 183, Eff. July 31, 1873;—How. 5691;—Am. 1897, Act 103, Imd. Eff. Apr. 28, 1897;—CL 1897, 8996;—CL 1915, 11728;—CL 1929, 13387;—CL 1948, 565.631.

**565.632 Destruction or loss of recorded instrument entitled to record in another county; transcript, recording, evidence.**

Sec. 2. When deeds and instruments conveying title to real estate or any letter of attorney or other instrument containing a power to convey lands as agent or attorney for the owners of such lands, executed and acknowledged in the manner provided by the statutes of this state for the execution and acknowledgment of deeds or other conveyances of land, shall have been actually and regularly recorded in the office of the register of deeds of any of the counties of the state; and when such deeds, mortgages, instruments or other papers duly executed and designed for and entitled to record in more than 1 county of the state; and when such original papers have been consumed by fire or otherwise destroyed or lost before such other records have been completed; on satisfactory proof of such loss or destruction being made to the circuit judge of the district wherein such papers have been recorded, he may make an order authorizing the register of deeds to furnish certified transcript copies of such deeds, mortgages, papers, with the circuit judge's order attached thereto, shall be presented to the register of deeds for any county of this state, it shall be the duty of such register to record the same; and when so recorded, such copy, and the record thereof, shall be as valid and entitled to the same credit in all matters of notice and proof of title as where the originals have been so entered on record; and a certified copy thereof, and such record or a duly certified copy shall be prima facie evidence of the due execution and acknowledgment of such letter of attorney or other instrument.

**History:** Add. 1873, Act 183, Eff. July 31, 1873;—How. 5716;—Am. 1897, Act 103, Imd. Eff. Apr. 28, 1897;—CL 1897, 8997;—CL 1915, 11729;—CL 1929, 13388;—CL 1948, 565.632.

**CONFIRMATION OF PUBLIC ACTS, RECORDS, SUITS, TAXES, AND OFFICIAL ACTS**  
**Act 72 of 1875**

**565.651, 565.652 Repealed. 1980, Act 180, Imd. Eff. July 2, 1980.**



**UNIFORM VENDOR AND PURCHASER RISK ACT**  
**Act 53 of 1941**

AN ACT concerning the risk of loss after a contract to sell realty, and to make uniform the law with reference thereto, and to repeal all acts or parts of acts inconsistent therewith.

**History:** 1941, Act 53, Eff. Jan. 10, 1942.

*The People of the State of Michigan enact:*

**565.701 Uniform vendor and purchaser risk act; provisions governing same deemed part of contract.**

Sec. 1. Any contract hereafter made in this state for the purchase and sale of realty shall be interpreted as including an agreement that the parties shall have the following rights and duties, unless the contract expressly provides otherwise:

(a) If, when neither the legal title nor the possession of the subject matter of the contract has been transferred, all or a material part thereof is destroyed without fault of the purchaser or is taken by eminent domain, the vendor cannot enforce the contract, and the purchaser is entitled to recover any portion of the price that he has paid;

(b) If, when either the legal title or the possession of the subject matter of the contract has been transferred, all or any part thereof is destroyed without fault of the vendor or is taken by eminent domain, the purchaser is not thereby relieved from a duty to pay the price, nor is he entitled to recover any portion thereof that he has paid.

**History:** 1941, Act 53, Eff. Jan. 10, 1942;—CL 1948, 565.701.

**565.702 Construction of act; uniformity.**

Sec. 2. This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

**History:** 1941, Act 53, Eff. Jan. 10, 1942;—CL 1948, 565.702.

**565.703 Uniform vendor and purchaser risk act; short title.**

Sec. 3. This may be cited as the uniform vendor and purchaser risk act.

**History:** 1941, Act 53, Eff. Jan. 10, 1942;—CL 1948, 565.703.

## LAND SALES ACT Act 286 of 1972

AN ACT to regulate the disposition of lots, parcels, units or interests in lands within real estate subdivisions; to require registration; to protect the purchaser from unfair and deceptive trade practices; to provide for the filing of bonds and performance assurances; to regulate advertising, promotions and sales contracts; to provide for the payment of fees; and to provide penalties.

**History:** 1972, Act 286, Eff. Mar. 30, 1973.

*The People of the State of Michigan enact:*

### **565.801 Short title.**

Sec. 1. This act shall be known and may be cited as the “land sales act”.

**History:** 1972, Act 286, Eff. Mar. 30, 1973.

**Compiler's note:** For effective date of provisions pertaining to the offering of subdivided lands for disposition, see MCL 565.835 .

**Transfer of powers:** See MCL 16.732.

### **565.802 Definitions.**

Sec. 2. As used in this act:

(a) “Advertising” means the publication or causing to be published of all material which has been prepared for public distribution by any means of communication. The term does not include stockholder communications such as annual reports and interim financial reports, proxy materials, registration statements, securities, prospectuses, applications for listing securities on stock exchanges, and the like; prospectuses, property reports, offering statements, or other documents required to be delivered to prospective purchaser by an agency of another state or the federal government; all communications addressed to and relating to the account of persons who have previously executed a contract for the purchase of the developer's lands, except where directed to the sale of additional lands.

(b) “Agent” means any person who represents, or acts for or on behalf of, a developer in disposing of subdivided lands or lots in a subdivision, and includes a real estate broker as defined in Act No. 306 of the Public Acts of 1919, as amended, being sections 451.201 to 451.219 of the Michigan Compiled Laws, but does not include an attorney at law whose representation of another person consists solely of rendering legal services.

(c) “Blanket encumbrance” means a trust deed or mortgage or mechanics lien or any other lien or financial encumbrance, securing or evidencing money debt and affecting lands to be subdivided or affecting more than 1 lot, parcel, unit, or interest of subdivided land; or an agreement affecting more than 1 lot, parcel, unit, or interest by which the developer holds the subdivision under an option, contract to purchase, or trust agreement, except a lien or other encumbrance arising as a result of the imposition of a tax assessment by a public authority so long as no portion thereof is past due.

(d) “Contiguous land” means any additional subdivided land adjacent to or adjoining the subdivided land included in any earlier subdivision for which a certificate of registration has been issued and which is offered under the same common subdivision name and the same common promotional plan of advertising and disposition.

(e) “Department” means the department of licensing and regulation.

(f) “Developer” means a person, or his agent, who, directly or indirectly, offers subdivided land for disposition, or who advertises subdivided land for disposition.

(g) “Director” means the director of the department of licensing and regulation or any person designated by him to act in his place.

(h) “Disposition” means a sale, lease, option, assignment, award by lottery or as a prize, or any offer or solicitation of an offer to do any of the foregoing concerning a subdivision or any part of a subdivision.

(i) “Notice” means a communication by mail from the department. Notice to developers shall be deemed complete when mailed certified return receipt requested to the developer's address currently on file with the department.

(j) “Offer” means every inducement, solicitation, or encouragement of a person to acquire a lot, unit, parcel, or interest in subdivided land.

(k) “Option” means, and is limited to, an offer to sell or to purchase respecting which a consideration of not more than 15% of the total purchase price is exchanged to guarantee that the offer will not be withdrawn or revoked for an agreed period of time.

(l) "Person" means an individual, corporation, government or governmental division or agency, business trust, estate, trust, partnership, unincorporated association, 2 or more of any of the foregoing having a joint or common interest, or any other legal or commercial entity.

(m) "Purchaser" means a person who acquires or attempts to acquire or succeeds to an interest in land.

(n) "Subdivision" and "subdivided land" means any land, wherever located, improved or unimproved, which is divided or proposed to be divided for the purpose of disposition into 25 or more lots, parcels, units, or interests, and includes any portion thereof. Subdivided lands include land located outside this state which is promoted by mail, telephone calls, solicitation, or advertisements within or directed into this state. The terms include any land, whether contiguous or not, if 25 or more lots, parcels, units, or interests are offered as a part of a common promotional plan of advertising and sale where subdivided land is offered for disposition by a single developer or a group of developers acting in concert. If the land is contiguous or is known, designated, or advertised as a common unit or by a common name the land shall be presumed, without regard to the number of lots covered by each individual offering, as being offered for disposition as part of a common promotional plan.

**History:** 1972, Act 286, Eff. Mar. 30, 1973;—Am. 1973, Act 184, Imd. Eff. Jan. 3, 1974.

### **565.803 Regulation and administration.**

Sec. 3. The disposition of lots, parcels, units or interests in land from subdivisions is subject to regulation and control pursuant to this act which is to be administered by the department.

**History:** 1972, Act 286, Eff. Mar. 30, 1973.

### **565.804 Offers or dispositions to which act inapplicable.**

Sec. 4. Unless the method of disposition is adopted for the purpose of evasion of this act, as the procedure for application for and approval of exemption is determined by rules of the department, this act does not apply to offers or dispositions of an interest in land:

(a) By a purchaser of subdivided land for his or her own account in a single or isolated transaction.

(b) If fewer than 25 separate lots, parcels, units, or interests in subdivided land are offered or to be offered after September 30, 1973.

(c) On which lot, parcel, or unit there is a commercial or industrial building, shopping center, dwelling unit, or apartment, or as to which there is a legal obligation on the part of the seller or his or her assignee or agent to construct a commercial or industrial building, shopping center, dwelling unit, or apartment within 2 years from date of sale, lease, option, assignment, award by lottery, or as a prize.

(d) For cemetery lots or interests.

(e) A subdivision as to which the plan of sale is to dispose to 10 or fewer persons.

(f) To any person who acquires the lots for the purpose of engaging in and does engage in, or who is engaged in the business of constructing residential, commercial, or industrial buildings for the purpose of resale; or constructing commercial or industrial buildings for his or her own use; or the lease of the lots to persons engaged in the business of constructing residential, commercial, or industrial buildings for the purpose of resale.

(g) Pursuant to court order.

(h) Securities currently registered or securities transactions exempted by order of the corporation and securities bureau of the department of commerce.

(i) By a person electing to make offers or dispositions under any 2 or more different exemptions.

(j) A campground developed pursuant to former Act No. 171 of the Public Acts of 1970 or Act No. 368 of the Public Acts of 1978, as amended, being sections 333.1101 to 333.25211 of the Michigan Compiled Laws, or a mobile home park developed pursuant to former Act No. 243 of the Public Acts of 1959, as amended, or Act No. 419 of the Public Acts of 1976, as amended, being sections 125.1101 to 125.1147 of the Michigan Compiled Laws.

(k) In a subdivision which has fewer than 50 lots, parcels, units, or interests and which has been fully recorded under Act No. 288 of the Public Acts of 1967, as amended, being sections 560.101 through 560.293 of the Michigan Compiled Laws, in the office of the registrar of deeds and in which no amenities are promised or advertised. Nothing in this section 4(k) shall limit the application of section 27 to a developer or agent of the developer.

(l) To the owner of adjacent land on which there is a commercial or industrial building, shopping center, dwelling unit, or apartment.

(m) Which is used or will be used for agricultural purposes.

**History:** 1972, Act 286, Eff. Mar. 30, 1973;—Am. 1973, Act 184, Imd. Eff. Jan. 3, 1974;—Am. 1980, Act 111, Imd. Eff. May 14,

1980.

**565.805 Additional offers or dispositions to which act inapplicable; condominiums.**

Sec. 5. Unless the method of disposition is adopted for the purpose of evasion of this act, as the procedure for application for and approval of exemption is determined by rules of the department, the provisions of this act do not apply to:

(a) Offers or dispositions of evidences of indebtedness secured by a mortgage or deed of trust of real estate.

(b) Offers or dispositions of securities or units of interest issued by a real estate investment trust regulated under any state or federal statute.

(c) Offers or dispositions of any interest in oil, gas, or other minerals or any royalty interest in oil, gas, or other minerals if the offers or dispositions of the interest are regulated as securities by the United States or by an agency of this state.

(d) Condominiums located in this state and regulated by the corporation and securities bureau of the department of commerce.

(e) Offers or dispositions of an interest in land by or to a state agency, city, village, township, county, or any other governmental unit, or United States governmental unit, body, or subdivision.

**History:** 1972, Act 286, Eff. Mar. 30, 1973;—Am. 1973, Act 184, Imd. Eff. Jan. 3, 1974;—Am. 1980, Act 111, Imd. Eff. May 14, 1980.

**565.806 Registration of subdivided lands required; delivery and examination of current property report; unfair and deceptive acts and practices; contract, agreement, or evidence of indebtedness; notice to purchaser; rescission; notice to developer; waiver.**

Sec. 6. Unless the subdivided lands or the transaction is exempt by this act:

(a) A person may not offer or dispose of any interest in subdivided lands located in this state nor offer or dispose in this state of any interest in subdivided lands located without this state prior to the time the subdivided lands are registered in accordance with this act.

(b) A person may not dispose of any interest in subdivided lands unless a current property report is delivered to the purchaser and the purchaser is afforded a reasonable opportunity to examine the property report prior to the disposition.

(c) A person may not engage in any unfair or deceptive act or practice in the conduct of and disposition of subdivided lands. Disposition of subdivided lands by option on an option or by assignment of less than the total options held by the seller, is presumed to be an unfair and deceptive practice. Disposition by instrument purporting to be an option is presumed unfair and deceptive if the stated consideration for the purported option exceeds 15% of the purchase price of the subdivided land or if the option does not separately state the purchase price.

(d) Any contract or agreement for the disposition of a lot, parcel, unit or interest in a subdivision covered by this act, where the property report has not been given to the purchaser in advance of the time of his signing, is voidable at the discretion of the purchaser. In addition, the purchaser has an unconditional right to rescind any contract, agreement or other evidence of indebtedness between the purchaser and the developer, or revoke any offer within 5 days from the date the purchaser actually receives a legible copy of the signed contract, agreement, or other evidence of indebtedness, or offer and the property report as provided in this act. Predating of a document does not defeat the time in which the right to rescind may be exercised. The burden of proof the document was not predated is upon the developer. An act of the developer in assigning or pledging a contract or agreement shall not waive the purchaser's right to void or rescind the contract or agreement as provided by this subsection. Each contract or agreement shall be prominently labeled and captioned that it is a document taken in connection with a sale or other disposition of lands under this act.

Each contract or agreement for the disposition of a lot, parcel, unit, or interest in a subdivision shall prominently contain upon its face the following notice printed in at least 8 point type which shall be at least 4 point bold type larger than the body of the document stating:

**NOTICE TO PURCHASER**

**YOU ARE ENTITLED TO CANCEL THIS AGREEMENT AT ANY TIME IF YOU HAVE NOT RECEIVED THE PROPERTY REPORT IN ADVANCE OF YOUR SIGNING OF THIS AGREEMENT. IN ADDITION, YOU ARE ENTITLED TO CANCEL THIS AGREEMENT FOR ANY REASON WITHIN 5 DAYS FROM THE DAY YOU ACTUALLY RECEIVE A LEGIBLE COPY OF THIS DOCUMENT.**

The contract or agreement shall contain sufficient space

upon its face in immediate conjunction with the above notice for the signature of each person obligated under the instrument acknowledging that the person has read the notice. A third party who is unrelated to the developer may, in connection with the purchase of, or the making of a loan secured by such contracts or agreements, rely on a document furnished by the developer, and signed by a purchaser acknowledging receipt of a property report in advance of signing a contract or agreement.

Rescission occurs when the purchaser gives written notice to the developer at the address stated in the contract or agreement. Notice of rescission if given by mail is effective when it is deposited in a mailbox properly addressed and postage prepaid. A notice of rescission given by the purchaser need not take a particular form and is sufficient if it indicates by any form of written expression the intention of the purchaser not to be bound by the contract or agreement.

(e) No act of a purchaser shall be effective to waive the right to rescind as provided in this section. However, the right of rescission terminates 5 years after the date the purchaser signs the contract or agreement.

**History:** 1972, Act 286, Eff. Mar. 30, 1973;—Am. 1973, Act 184, Imd. Eff. Jan. 3, 1974.

### **565.807 Application; filing; form; fee; signature; contents.**

Sec. 7. Before subdivided lands are offered for disposition, the developer shall file with the department an application upon forms to be supplied by the department. A registration fee shall accompany the application. The application may be filed before a plat has been recorded as provided for in section 172 of Act No. 288 of the Public Acts of 1967, being section 560.172 of the Michigan Compiled Laws, provided the plat has received final approval of the preliminary plat under section 120, as amended, of that act. The application shall be filed as prescribed by the department's rules. The application shall be signed by an authorized agent of the applicant and include, but is not limited to, the following documents and information:

(a) An irrevocable appointment of the department to receive service of any lawful process in any civil proceeding arising under this act against the developer or his agent.

(b) The applicant's name and address, and the forms, date, and jurisdiction of the organization; and the address of each of its resident agents, officers, and directors in the state; the name, address, and principal occupation for the past 5 years of every director and officer and each owner of 10% or more of the shares of the applicant and any person occupying a similar status or performing similar functions; the extent and nature of his interest in the applicant and the subdivided lands as of a specified date within 30 days of the filing of the application.

(c) A legal description of, based on a survey by a professional land surveyor, and a statement of the total area included in the subdivision, and a statement of the topography thereof, together with a map showing the division proposed or made, the dimensions of the lots, parcels, units, or interests and the relation of the subdivided lands to existing streets, roads, and other off-site improvements.

(d) The states or jurisdictions in which an application for registration or similar document has been filed and any order, judgment, or decree entered in connection with the subdivided lands by the regulatory authorities in each jurisdiction or by any court.

(e) A statement, in a form acceptable to the department, of the condition of the title to the land comprising the subdivision, including all encumbrances and deed restrictions and covenants applicable thereto with data as to recording.

(f) Copies of the instruments by which the interest in the subdivided lands was acquired or proof of marketable title to subdivided lands.

(g) Copies of instruments which will be delivered to a purchaser to evidence his interest in the subdivided lands and of the contracts and other agreements which a purchaser will be required to agree to or sign, together with the range of selling prices, rents, or leases at which it is proposed to dispose of the lots, units, parcels, or interests in the subdivisions.

(h) Copies of instruments creating, altering, or removing easements, restrictions, or other encumbrances affecting the subdivided lands.

(i) A statement of the present condition of access to the subdivision, the availability of sewage disposal facilities and other public utilities, including water, electricity, gas, and telephone facilities, in the subdivision, the proximity in miles of the subdivision to nearby municipalities and the nature of any improvements to be installed and by whom they are to be installed and paid for and an estimated schedule for completion, together

with a statement as to the provisions for improvement maintenance.

(j) A statement of the current zoning and any existing tax and existing or proposed special assessments which affect the subdivided lands.

(k) If there is a blanket encumbrance against any subdivision or portion thereof, a description of the encumbrance and a statement of the consequences for an individual purchaser of a failure by the persons bound to fulfill obligations under the instrument creating the encumbrance and the steps, if any, taken to protect the purchaser in such eventuality.

(l) A narrative description of the promotional plan for the disposition of the subdivided lands together with copies of all advertising material which has been prepared for public distribution by any means of communication.

(m) Such financial statements of the developer as the department may require.

(n) The proposed property report.

(o) A statement that the developer has or has not been subject to any injunction or administrative order entered within the past 10 years restraining a false or misleading promotional plan involving land dispositions.

(p) Such other information and such other documents and certifications as the department may require as being reasonably necessary or appropriate for the protection of purchasers.

**History:** 1972, Act 286, Eff. Mar. 30, 1973;—Am. 1973, Act 184, Imd. Eff. Jan. 3, 1974.

#### **565.808 Form and contents of property report.**

Sec. 8. The property report shall disclose fully and accurately the physical characteristics of the subdivided lands offered and shall make known to prospective purchasers all unusual and material conditions relating to noise, health, safety, and welfare which affect the subdivision and are known to the developer. The proposed property report submitted to the department shall be in a form prescribed by its rules and shall include the following:

(a) The name and principal address of the developer.

(b) A general description of the subdivided lands stating the total number of lots, parcels, units, or interests in the offering.

(c) The significant terms of any encumbrances, easements, liens, and restrictions, including the current zoning classification and the name and address of the governmental office where a complete current copy of the zoning ordinances may be inspected, affecting the subdivided lands and each lot, unit, parcel, or interest and a statement of all existing taxes and existing or proposed special assessments which affect the subdivided lands.

(d) A statement of the use for which the property is offered.

(e) Information concerning existing or proposed improvements, including streets, water supply levels, drainage control systems, irrigation systems, sewage disposal systems, and customary utilities and the estimated cost, date of completion, and responsibility for construction and maintenance of existing and proposed improvements which are referred to in connection with the offering or disposition of any lot, unit, parcel, or interest in subdivided lands.

(f) The following statement: "This property may be located in the vicinity of a farm or farm operation. Generally accepted agricultural and management practices may be utilized by the farm or farm operation and may generate usual and ordinary noise, dust, odors, and other associated conditions, and these practices are protected by the Michigan right to farm act. The seller is not required to disclose whether a farm or farm operation is actually located in the vicinity of the property or whether generally accepted agricultural and management practices are being utilized."

(g) Such additional information as may be required by the department to assure full and fair disclosure to prospective purchasers.

**History:** 1972, Act 286, Eff. Mar. 30, 1973;—Am. 1973, Act 184, Imd. Eff. Jan. 3, 1974;—Am. 1995, Act 84, Eff. Sept. 30, 1995.

#### **565.809 Prohibited uses of property report.**

Sec. 9. The property report shall not be used for any promotional purposes. A person may not advertise or represent that the department approved or recommends the subdivided lands or disposition thereof. A portion of the property report may not be underscored, italicized or printed in larger or heavier or different color type than the remainder of the statement unless the department requires it.

**History:** 1972, Act 286, Eff. Mar. 30, 1973.

#### **565.810 Alteration or amendment of proposed property report; approval of changes; incorporation of amendments; advertising and disposition pending approval.**



Sec. 10. The department may require the developer to alter or amend the proposed property report in order to assure full and fair disclosure to prospective purchasers and a change in the substance of the promotional plan or plan of disposition or development of the subdivision may not be made after registration without prior written approval of the department nor without approval of appropriate amendment of the property report. A property report is not current unless all amendments are incorporated. The department may allow, in writing, continued advertising and disposition pending approval of amendment.

**History:** 1972, Act 286, Eff. Mar. 30, 1973.

#### **565.811 Consolidation of registrations; amendment of property report; rejection; statement of deficiencies.**

Sec. 11. If the developer registers additional subdivided lands to be offered for sale, he may consolidate the subsequent registration with any earlier registration under this act offering subdivided lands for sale under the same promotional plan, and the property report shall be amended to include the additional lands so registered. The consolidation of registration of additional subdivided lands shall be deemed registered after 30 days unless a rejection is entered issuing a specific statement of the deficiencies within 30 days thereof or a delay agreed upon.

**History:** 1972, Act 286, Eff. Mar. 30, 1973;—Am. 1973, Act 184, Imd. Eff. Jan. 3, 1974.

#### **565.812 Application for registration; reporting changes in information.**

Sec. 12. The developer shall report immediately any material changes in the information contained in the application for registration.

**History:** 1972, Act 286, Eff. Mar. 30, 1973.

#### **565.813 Conditions for registration; examination to determine compliance.**

Sec. 13. Upon receipt of an application for registration in proper form, the department shall initiate an examination to determine compliance with the following conditions for registration:

(a) The developer can convey or cause to be conveyed the interest in subdivided lands offered for disposition if the purchaser complies with the terms of the offer and when appropriate, that release clauses, conveyances in trust or other safeguards have been provided.

(b) There is reasonable assurance that all proposed improvements will be completed as represented.

(c) The advertising material and the general promotional plan are not false or misleading and comply with department rules and afford full and fair disclosure.

(d) The developer has not, or if a corporation, its officers, directors and principals have not, been convicted of a crime involving lands dispositions or any aspect of land sales business in this state, the United States or any other state or foreign country within the past 10 years.

(e) The property report requirements of this act have been satisfied.

**History:** 1972, Act 286, Eff. Mar. 30, 1973.

#### **565.814 Notice of filing; registration order; order of rejection; amendment of application; certificate of registration; correction of application; receipt of amendment or report of material change; suspension of certificate; untrue statement or omission of material fact; compliance with subdivision control act.**

Sec. 14. (1) Upon receipt of the application for registration in proper form, the department shall issue a notice of filing to the applicant. Within 60 days from the date of the notice of filing, the department shall enter an order registering the subdivided lands or rejecting the registration with notice of specific deficiencies therein. If an order of rejection is not entered within 60 days from the date of notice of filing, the land shall be deemed registered unless the applicant has consented in writing to a delay. If any amendment to the application for registration is filed prior to the time when the land shall be deemed registered, the application shall be deemed to have been filed when the amendment was filed except that an amendment filed with the consent of the department or filed pursuant to an order of the department shall be treated as being filed as of the date of the filing of the original application for registration.

(2) If the department affirmatively determines, upon inquiry and examination, that the requirements of this act and the rules promulgated pursuant to the act have been met, it shall issue a certificate of registration registering the subdivided lands and approve the form of the property report.

(3) If the department determines upon inquiry and examination that any of the requirements of this act or the rules promulgated pursuant to this act have not been met, it shall notify the applicant that the application for registration must be corrected in the particulars specified within 15 days from receipt of notice unless extended in writing by the department. If the requirements are not met within the time allowed, the

department may enter an order rejecting the registration which shall include the findings of fact upon which the order is based.

(4) If at any time subsequent to the issuance of the certificate of registration, a change occurs affecting any material fact required to be contained in the application, the developer shall file an amendment thereto within 30 days. Upon receipt of any amendment or report of material change, if the department determines such action to be necessary or appropriate in the public interest or for the protection of purchasers, it may suspend the certificate of registration until such time as the amendment shall be deemed registered. The amendment shall be deemed to be registered after 30 days unless a rejection is entered or a delay agreed upon.

(5) If it appears to the department at any time that an application, for which there has been issued a certificate of registration, includes any untrue statement of a material fact or omits to state any material fact required by this act or necessary to make the statements not misleading or deceptive, after notice and after an opportunity for hearing at a time fixed by the department within 20 days after the notice, the department may issue an order suspending the registration. When the application has been amended in accordance with the order, the department shall so declare and thereupon the order shall cease to be effective.

(6) The department shall not issue a certificate of registration if it is determined that the offering is for a subdivision of land until the developer complies with the provisions of Act No. 288 of the Public Acts of 1967, as amended, being sections 560.101 to 560.293 of the Compiled Laws of 1948, if the director determines that the subdivision is required to conform to that act.

**History:** 1972, Act 286, Eff. Mar. 30, 1973.

#### **565.815 Developer's report; filing, form, and contents; renewal of certificate of registration.**

Sec. 15. (1) Within 30 days after each annual anniversary date of an order registering subdivided lands, the developer shall file a report in the form prescribed by the rules of the department. The report shall reflect any material changes in information contained in the original application for registration.

(2) The department may permit the filing of annual reports within 30 days after the annual anniversary date of the consolidated registration in lieu of the annual anniversary date of the original registration.

(3) A certificate of registration which has not been revoked or is not suspended shall be renewed annually upon compliance with this act.

**History:** 1972, Act 286, Eff. Mar. 30, 1973.

#### **565.816 Conditions for sale of lots, units, parcels, or interests within subdivision subject to blanket encumbrance.**

Sec. 16. The developer shall not sell lots, units, parcels, or interests within a subdivision subject to a blanket encumbrance unless 1 of the following conditions or the equivalent as determined by rules promulgated by the department is met:

(a) All sums paid or advanced by purchasers are placed in an escrow or other depository acceptable to the director until the fee title contracted for is delivered to the purchaser by deed together with complete release from all financial encumbrances; or the developer or the purchaser default and fail to perform under their contract of disposition and there is a final determination by a court of competent jurisdiction or the director as to the disbursement of such moneys or they be voluntarily returned to the contract purchaser.

(b) The fee title to the subdivision is placed in trust under an agreement or trust acceptable to the department until a proper release from each blanket encumbrance including all taxes is obtained and title contracted for is delivered to such purchaser.

(c) A bond, cash, certified check, or irrevocable bank letter of credit issued by a bank authorized to do business in the state is furnished the department in the name of the state for the benefit and protection of purchasers of the lots, units, parcels, or interest, in such amount and subject to terms as approved by the department. The bond shall be executed by a surety company authorized to do business in the state and which has given consent to be sued in this state. The bond or agreement accompanying the cash, certified check, or irrevocable bank letter of credit shall provide for the return of moneys paid or advanced by any purchaser, on account of purchase of any lot, unit, parcel, or interest if the title contracted for is not delivered and a full release from each blanket encumbrance is not obtained. If it is determined that the purchaser by reason of default or otherwise, is not entitled to the return of the moneys, or any portion thereof, then the bond, cash, certified check, or irrevocable bank letter of credit may be released by the department in the amount of moneys to which the purchaser of a lot, unit, parcel, or interest is not entitled.

(d) The blanket encumbrance shall contain provisions evidencing the subordination of the lien of the blanket encumbrance to the rights of those persons purchasing from the developer or evidencing that the developer is able to secure releases from the blanket encumbrance with respect to the property.



**History:** 1972, Act 286, Eff. Mar. 30, 1973;—Am. 1973, Act 184, Imd. Eff. Jan. 3, 1974.

#### **565.817 Approval or rejection of advertising material; amendment.**

Sec. 17. (1) All advertising material not accompanying the original application shall be submitted to the department for approval prior to its use in the state.

(2) Within 15 days from the date of receipt of the proposed advertising, the department shall enter an order approving or rejecting the advertising. If an order of rejection is not entered within 15 days from the date of receipt, the advertising shall be deemed approved unless the applicant has consented in writing to a delay. If any amendment to the application for approval of advertising is filed prior to the time when the land shall be deemed approved, the application shall be deemed to have been filed when the amendment was filed except that an amendment filed with the consent of the department, or filed pursuant to an order of the department, shall be treated as being filed as of the date of the filing of the original application.

**History:** 1972, Act 286, Eff. Mar. 30, 1973.

#### **565.818 Material used to induce purchaser to visit subdivided land.**

Sec. 18. The director may require that any material used by a developer or his agent to induce prospective purchasers to visit the subdivided land contain certain additional pertinent information. The information may include but is not limited to, terms and conditions of the offers and the nature and extent of the developer's participation in the campaign. The director may require reasonable assurances that such obligation incurred by a developer or its agents can be met.

**History:** 1972, Act 286, Eff. Mar. 30, 1973.

#### **565.819 Rules.**

Sec. 19. The department shall promulgate rules in accordance with and subject to Act No. 306 of the Public Acts of 1969, as amended, being sections 24.201 to 24.315 of the Compiled Laws of 1948. The rules shall include but need not be limited to:

- (a) Provisions for advertising standards to assure full and fair disclosure.
- (b) Provisions for escrow or trust or trust agreement or other means reasonably to assure that all improvements referred to in the application for registration and advertising will be completed and that purchasers will receive the interest in land contracted for and full and fair disclosure in the property report informing the purchaser.
- (c) Provisions for operating procedures.
- (d) Provisions requiring instruments to be executed in recordable form.
- (e) Provisions relating to apportionment of taxes.
- (f) Other rules necessary and proper to accomplish the purpose of this act.

**History:** 1972, Act 286, Eff. Mar. 30, 1973.

**Administrative rules:** R 338.3201 et seq. of the Michigan Administrative Code.

#### **565.820 Investigation of subdivision.**

Sec. 20. The department shall investigate every subdivision offered for disposition in this state and may:

(a) Rely upon any relevant information concerning subdivided lands obtained from the federal housing administration, the United States veterans administration or any other federal agency having comparable duties in relation to subdivision of real estate.

(b) Accept registrations filed in other states or with the federal government and cooperate with similar agencies in other jurisdictions to establish uniform filing procedures and forms, uniform property reports, advertising standards, rules and common administrative practices. If a statement of record has been filed with and the property report accepted by the federal office of interstate land sales, the department may accept a copy of that statement of record and property report as part of the disclosure requirements under this act and accept an addendum to the statement of record and property report which shall satisfy the addition requirements of this act.

(c) Require the applicant to submit reports prepared by registered or licensed engineers as to any hazard to which any subdivision offered for disposition is subject in the opinion of the department, or any other factor which affects the utility of lots, units, parcels or interests within the subdivision and require evidence of compliance to remove or minimize all hazards stated by competent engineering reports.

(d) Make an on site inspection of each subdivision prior to its registration and periodic on site inspections thereafter. The developer shall defray all actual and necessary expenses incurred by the inspector in the course of the inspection.

(e) Require the developer to deposit with the department the expenses to be incurred in any inspection or reinspection, in advance, based upon an estimate by the department of the expenses likely to be incurred.

(f) Where an on site inspection of any subdivision has been made under this act, an inspection of a subsequent application for registration of contiguous land may be waived and an inspection thereof shall be made at the time of the next succeeding on site inspection.

**History:** 1972, Act 286, Eff. Mar. 30, 1973.

#### **565.821 Contract for disposition of subdivided lands; contents.**

Sec. 21. Every contract for disposition of subdivided land shall state clearly the legal description of the lot, unit, parcel or interest disposed of and shall contain disclosures as required by the federal truth in lending act, Public Law 90-321, and the rules promulgated thereunder.

**History:** 1972, Act 286, Eff. Mar. 30, 1973.

#### **565.822 Failure to pay registration and inspection fees; penalty.**

Sec. 22. Any developer who fails to pay when due, after written notice by the department, the registration and inspection fees provided in this act and continues to dispose of or offers to dispose of subdivided lands, is liable civilly in an action brought by the attorney general on behalf of the department for a penalty in an amount equal to treble the unpaid fees. The department may suspend or revoke a registration for which any application or inspection fee provided in this act is unpaid, after written notice by the department.

**History:** 1972, Act 286, Eff. Mar. 30, 1973.

#### **565.823 Investigations; statements; oaths or affirmations; subpoenas; order compelling compliance; proceedings.**

Sec. 23. (1) The department may:

(a) Make necessary public or private investigations within or outside of this state to determine whether any person has violated or is about to violate this act or any rule or order hereunder or to aid in the enforcement of this act or in the prescribing of rules and forms hereunder.

(b) Require or permit any person to file a statement in writing, under oath or otherwise as the department determines, as to all the facts and circumstances concerning the matter to be investigated.

(2) For the purpose of any investigation or proceeding under this act, the department or any officer designated by rule may administer oaths or affirmations, and upon its own motion or upon request of any party may subpoena witnesses, compel their attendance, take evidence, and require the production of any matter which is relevant to the investigation, including the existence, description, nature, custody, condition and location of any books, documents or other tangible things and the identity and location of persons having knowledge of relevant facts, or any other matter reasonably calculated to lead to the discovery of material evidence.

(3) Upon failure to obey a subpoena or to answer questions propounded by the investigating officer and upon reasonable notice to all persons affected thereby, the department may apply to the circuit court of Ingham county for an order compelling compliance.

(4) Except as otherwise provided in this act, all proceedings under this act shall be in accordance with Act No. 306 of the Public Acts of 1969, as amended.

**History:** 1972, Act 286, Eff. Mar. 30, 1973.

#### **565.824 Cease and desist order; order to take affirmative action.**

Sec. 24. (1) The department may issue an order requiring a person to cease and desist from the unlawful act and to take such affirmative action as in the judgment of the department will carry out the purposes of this act, if it determines, after notice and hearing, that a person has done any of the following:

(a) Violated any provision of this act.

(b) Directly or through an agent or employee knowingly engaged in any false, deceptive or misleading advertising, promotional or sales methods to offer or dispose of an interest in subdivided lands.

(c) Made any substantial change in the plan of disposition and development of the subdivided lands subsequent to the order of registration without obtaining prior written approval from the department.

(d) Disposed of any subdivided lands which have not been registered with the department.

(e) Violated any lawful order or rule of the department.

(2) If the department makes a finding of fact in writing that the public interest will be irreparably harmed by delay in issuing an order, it may issue a temporary cease and desist order. Prior to issuing the temporary cease and desist order, the department whenever possible by telephone or otherwise shall give notice of the proposal to issue a temporary cease and desist order to the person. Every temporary cease and desist order

shall include in its terms a provision that upon request a hearing will be held within 30 days to determine whether or not it becomes permanent.

**History:** 1972, Act 286, Eff. Mar. 30, 1973.

#### **565.825 Revocation of registration; grounds; notice and hearing; findings of fact; cease and desist order.**

Sec. 25. (1) A registration may be revoked after notice and hearing upon a written finding of fact that the developer has done any of the following:

- (a) Failed to comply with the terms of a cease and desist order.
  - (b) Been convicted in any court subsequent to the filing of the application for registration of a crime involving fraud, deception, false pretenses, misrepresentation, false advertising or dishonest dealing in real estate transactions.
  - (c) Disposed of, concealed or diverted any funds or assets of any person so as to defeat the rights of subdivision purchasers.
  - (d) Failed faithfully to perform any stipulation or agreement made with the department as an inducement to grant any registration, to reinstate any registration or to approve any promotional plan or property report.
  - (e) Made intentional misrepresentations or concealed material facts in an application for registration.
- (2) Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings.
- (3) If the department finds after notice and hearing that the developer is guilty of a violation for which revocation could be ordered, it may issue a cease and desist order instead.

**History:** 1972, Act 286, Eff. Mar. 30, 1973.

#### **565.826 Injunctive relief or temporary restraining order; appointment of receiver or conservator; bond.**

Sec. 26. If it appears that a person has engaged or is about to engage in an act or practice constituting a violation of this act or a rule or order hereunder, the department, with or without prior administrative proceedings, may bring an action in circuit court of Ingham county to enjoin the acts or practices and to enforce compliance with this act or any rule or order hereunder. Upon proper showing, injunctive relief or temporary restraining orders shall be granted and a receiver or conservator may be appointed. The department is not required to post a bond in any court proceedings.

**History:** 1972, Act 286, Eff. Mar. 30, 1973.

#### **565.827 False or fraudulent statement; misrepresentation; noncompliance with cease and desist order; penalty.**

Sec. 27. Every developer or agent of a developer who authorizes, directs, or aids in the publication, advertisement, distribution, or circularization of a false statement or misrepresentation, made with knowledge of its falsity, concerning a subdivision offered for disposition or who knowingly fails to comply with the terms of a final cease and desist order and every person with knowledge that an advertisement, pamphlet, prospectus, or letter concerning a subdivision contains any written statement that is false or fraudulent, who issues, circulates, publishes, or distributes the same or causes the same to be issued, circulated, published, or distributed or who knowingly fails to comply with the terms of a final cease and desist order, is guilty of a felony and may be fined not more than \$25,000.00, or imprisoned not more than 10 years, or both. Each violation constitutes a separate offense.

**History:** 1972, Act 286, Eff. Mar. 30, 1973;—Am. 1973, Act 184, Imd. Eff. Jan. 3, 1974.

#### **565.828 Violation of act; penalty.**

Sec. 28. Any violation of this act other than as provided in section 27 is a misdemeanor and every violator may be fined not more than \$2,000.00 or imprisoned for not more than 90 days, or both, for each offense.

**History:** 1972, Act 286, Eff. Mar. 30, 1973.

#### **565.829 Service of process.**

Sec. 29. (1) In addition to the methods of service provided for in any other provision of law, service may be made by delivering a copy of the process to the office of the department if the plaintiff, which may be the department in a proceeding instituted by it, does both of the following:

- (a) Sends a copy of the process and of the pleading by registered mail to the defendant or respondent at his last known address.

(b) Files its affidavit of compliance with this section in the case on or before the return day of the process or within such time as the court allows.

(2) If any person, including any nonresident of this state, engages in conduct prohibited by this act or any rule or order and has not filed a consent to service of process and personal jurisdiction over him cannot otherwise be obtained in this state, the conduct authorizes the department to receive service of process in any noncriminal proceeding against him or his successor which grows out of the conduct and which is brought under this act or any rule or order hereunder, with the same force and validity as if served on him personally. Notice shall be given as provided in subsection (1).

**History:** 1972, Act 286, Eff. Mar. 30, 1973.

#### **565.830 Fees.**

Sec. 30. (1) A registration fee shall be paid with the application for registration as provided in section 35 of the "state license fee act".

(2) A registration fee shall be paid with the filing of an application for registration consolidating additional lots with a prior registration. The fee shall be as provided in section 35 of the "state license fee act".

(3) A fee shall not be charged for an amendment to the property report as a result of an amendment to the initial filing, unless the department determines the amendment is made to avoid the payment of a fee. If the amendment is made to avoid payment of a fee, the amendment may be treated as an application for registration consolidating additional lots with a prior registration.

(4) A fee provided in section 35 of the "state license fee act" shall be paid with each submission of advertising for approval.

(5) In addition to the payment of inspection expenses as provided in section 20, an annual renewal fee provided in section 35 of the "state license fee act" shall be paid.

**History:** 1972, Act 286, Eff. Mar. 30, 1973;—Am. 1979, Act 164, Imd. Eff. Dec. 10, 1979.

#### **565.831 Liability to purchaser for violation, deceptive act or practice, untrue statement, or omission; remedies of purchaser; joint and several liability; contribution; tender of reconveyance; limitation of action.**

Sec. 31. (1) A person who disposes of subdivided lands in violation of section 6 or who, in disposing of subdivided lands engages in a deceptive act or practice, makes an untrue statement of a material fact or omits a material fact required to be stated in a registration statement or property report or necessary to make the statements made not misleading, is liable as provided in this section to the purchaser unless in the case of an untruth or omission it is proved that the purchaser did not rely on the untruth or omission.

(2) In addition to any other remedies, the purchaser under subsection (1) may recover the consideration paid for the lot, parcel, unit, or interest in subdivided lands together with interest at the rate of 6% per year from the date of payment, property taxes paid, costs and reasonable attorneys' fees, less the amount of any income received from the subdivided lands, upon tender of appropriate instruments of reconveyance. If the purchaser no longer owns the lot, parcel, unit, or interest in subdivided lands, he may recover the amount that would be recoverable upon a tender of a reconveyance, less the value of the land when disposed of and less interest at the rate of 6% per year on that amount from the date of disposition.

(3) Every person who directly or indirectly controls a subdivider liable under subsection (1), every general partner, officer, or director of a subdivider, every person occupying a similar status or performing a similar function, every employee of the subdivider who materially aids in the disposition and every agent who materially aids in the disposition is also liable jointly and severally with and to the same extent as the subdivider, unless the person otherwise liable sustains the burden of proof that he did not know and in the exercise of reasonable care could not have known of the existence of the facts by reason of which the liability is alleged to exist. There is a right to contribution as in cases of contract among persons so liable.

(4) Every person whose occupation gives authority to a statement which with his consent has been used in an application for registration or property report, if he is not otherwise associated with the subdivision and development plan in a material way, is liable only for false statements and omissions in his statement and only if it is proved he knew or reasonably should have known of the existence of the true facts by reason of which the liability is alleged to exist. However, if the person is a registered professional licensed by this state whose statement was part of his representation of another person in rendering professional services, liability hereunder shall not exceed that resulting from a duty to exercise a reasonable degree of care and skill ordinarily possessed and exercised by members of that profession similarly situated.

(5) A tender of reconveyance may be made at any time before the entry of judgment.

(6) An action shall not be commenced pursuant to this section later than 3 years from the time performance of all promises, statements, or representations contained in any registration statement, property report,

purchase agreement, contract, option, or other evidence of a disposition of subdivided lands is to be completed. Where the cause of action arises out of any deceptive act or practice or the omission to state a material fact, the action shall be commenced no later than 3 years from the date the person discovers or should have reasonably discovered the deceit or omission. An action shall not be commenced by a purchaser more than 6 years after the sale or lease to the purchaser.

**History:** 1972, Act 286, Eff. Mar. 30, 1973;—Am. 1973, Act 184, Imd. Eff. Jan. 3, 1974.

#### **565.832 Dispositions of subdivided lands subject to act; jurisdiction of circuit court.**

Sec. 32. Dispositions of subdivided lands are subject to this act and the circuit courts of this state have jurisdiction in claims or causes of action arising under this act, in the following cases:

(a) The subdivided lands offered for disposition are located in this state.

(b) The subdivider's principal office is located in this state.

(c) Any offer or disposition of subdivided lands is made in this state, whether or not the offeror or offeree is then present in this state, if the offer originates within this state or is directed by the offeror to a person or place in this state and received by the person or at the place to which it is directed.

**History:** 1972, Act 286, Eff. Mar. 30, 1973.

#### **565.833 Repealed. 1973, Act 184, Imd. Eff. Jan. 3, 1974.**

**Compiler's note:** The repealed section pertained to validity and consolidation of prior registrations of subdivisions.

#### **565.834 Effect of act on horizontal real property.**

Sec. 34. No portion of this act shall have any effect on or take precedence over the application and enforcement within the state of Act No. 229 of the Public Acts of 1963, as amended, being sections 559.1 to 559.31 of the Compiled Laws of 1948.

**History:** 1972, Act 286, Eff. Mar. 30, 1973.

**Compiler's note:** Sections 559.1 to 559.31, referred to in this section, were repealed by Act 59 of 1978 .

#### **565.835 Effective date; exception; rules, forms, instructions, and applications.**

Sec. 35. The provisions of this act shall take effect October 1, 1973, except that section 19 shall take effect April 1, 1973 and the department shall make available such rules, and all necessary forms and instructions for and may accept and process applications for registration, applications for approval of exemption, applications for approval of advertising and applications for consolidation of registrations and may make examinations, investigations and conduct inquiries incident to such applications prior to October 1, 1973 so that persons regulated by the act can be in compliance therewith on October 1, 1973.

**History:** 1972, Act 286, Eff. Mar. 30, 1973;—Am. 1973, Act 5, Imd. Eff. Mar. 31, 1973.

## **PRIORITY OF MORTGAGES**

### **Act 348 of 1990**

AN ACT to establish the priority of a mortgage that secures an indebtedness or other obligation that arises or is incurred after the mortgage has been recorded.

**History:** 1990, Act 348, Eff. Apr. 1, 1991.

*The People of the State of Michigan enact:*

#### **565.901 Definitions.**

Sec. 1. As used in this act:

(a) "Future advance" means an indebtedness or other obligation that is secured by a mortgage and arises or is incurred after the mortgage has been recorded, whether or not the future advance was obligatory or optional on the part of the mortgagee.

(b) "Future advance mortgage" means a mortgage that secures a future advance and is recorded either prior to or after the effective date of this act. If a recorded mortgage is amended to secure, expressly and not by implication, a future advance arising after the amendment, the mortgage becomes a future advance mortgage at the time the amendment is recorded.

(c) "Protective advance" means a future advance that arises because the mortgagee makes an expenditure or expenditures for 1 or more of the following:

(i) To fulfill or perform an obligation of the mortgagor under the mortgage, with respect to the mortgaged property, that the mortgagor has failed to fulfill or perform.

(ii) To preserve the priority of the mortgage or the value of the mortgaged property.

(iii) For attorneys fees or other expenses that are incurred in exercising a right or remedy under the mortgage or that the mortgagor has agreed in the mortgage to reimburse to the mortgagee.

(d) "Residential future advance mortgage" means a future advance mortgage upon 1 or more of the following:

(i) A single structure designed principally for the occupancy of from 1 to 4 families.

(ii) A single manufactured home designed principally for the occupancy of from 1 to 4 families.

(iii) A single condominium unit or cooperative unit, designed principally for the occupancy of from 1 to 4 families.

(iv) Land upon which the mortgagor intends to construct a single structure designed principally for the occupancy of from 1 to 4 families, if the structure is to be constructed using proceeds of a loan secured by the mortgage, unless the mortgagor intends to resell the structure without occupying it as a dwelling.

(v) Land upon which the mortgagor intends to place a single manufactured home, if it will be purchased using proceeds of a loan secured by the mortgage, unless the mortgagor intends to resell the manufactured home without occupying it as a dwelling.

(e) Notwithstanding subdivision (d), a mortgage is not a "residential future advance mortgage" if the land subject to the mortgage is more than 25 acres in size.

**History:** 1990, Act 348, Eff. Apr. 1, 1991;—Am. 1992, Act 35, Eff. July 1, 1992.

#### **565.902 Priority of future advance mortgage.**

Sec. 2. Except as otherwise provided by this act, a future advance mortgage securing a future advance shall have priority with respect to the future advance as if the future advance was made at the time the future advance mortgage was recorded.

**History:** 1990, Act 348, Eff. Apr. 1, 1991;—Am. 1992, Act 35, Eff. July 1, 1992.

#### **565.903 Priority of recorded mortgage amended to become future advance mortgage.**

Sec. 3. Except as otherwise provided by this act, if a recorded mortgage has been or is amended to become a future advance mortgage, it shall have priority with respect to a future advance secured by the mortgage as if the future advance was made at the time the amendment was recorded.

**History:** 1990, Act 348, Eff. Apr. 1, 1991;—Am. 1992, Act 35, Eff. July 1, 1992.

#### **565.903a Priority of residential future advance mortgage.**

Sec. 3a. (1) Sections 2 and 3 do not apply to a residential future advance mortgage, except to the extent the mortgage secures a protective advance unless there are set forth in a conspicuous manner on the first page of the mortgage or on the first page of an amendment to the mortgage both of the following statements:



(a) "This is a future advance mortgage".

(b) A statement of the maximum principal amount, excluding protective advances, that may be secured by the mortgage.

(2) For purposes of subsection (1), a printed heading in capitals is conspicuous, and language in the body of a mortgage or amendment to a mortgage is conspicuous if it is in larger or other contrasting type.

(3) Except as provided in subsection (4), if a residential future advance mortgage is amended to contain the statements required in subsection (1), then the mortgage has priority with respect to a future advance secured by the mortgage as if the future advance were made at the time the amendment was recorded.

(4) Notwithstanding subsections (1) and (3), if a residential future advance mortgage was recorded before the effective date of the amendatory act that added this section, and if another mortgage, lien, or other interest in the property was recorded after the residential future advance mortgage was recorded, after March 31, 1991, and before the effective date of the amendatory act that added this section, then the residential future advance mortgage has priority, in accordance with sections 2 and 3, with respect to a future advance secured by the mortgage, over the other mortgage, lien, or other interest, even though the residential future advance mortgage does not contain the statements described in subsection (1). If a mortgage is amended to become a residential future advance mortgage, then for purposes of this subsection the mortgage is considered to have been recorded at the time the amendment was recorded.

(5) If sections 2 and 3 do not apply to a residential future advance mortgage with respect to a future advance secured by the mortgage, then the priority of the mortgage with respect to the advance shall be determined by the law that would have applied in the absence of this act, except as provided in subsection (4).

**History:** Add. 1992, Act 35, Eff. July 1, 1992.

#### **565.904 Priority of future advance mortgage over another interest in property recorded prior to April 1, 1991.**

Sec. 4. This act does not give a future advance mortgage priority over another mortgage, lien, or other interest in the property that was recorded prior to April 1, 1991 if the other mortgage, lien, or other interest in the property would have had priority in the absence of this act.

**History:** 1990, Act 348, Eff. Apr. 1, 1991;—Am. 1992, Act 35, Eff. July 1, 1992.

#### **565.905 Applicability of act.**

Sec. 5. This act does not apply to the extent that priority is governed by section 119 of the construction lien act, Act No. 497 of the Public Acts of 1980, being section 570.1119 of the Michigan Compiled Laws, or by section 29 of Act No. 122 of the Public Acts of 1941, being section 205.29 of the Michigan Compiled Laws.

**History:** 1990, Act 348, Eff. Apr. 1, 1991.

#### **565.906 Effective date.**

Sec. 6. This act shall take effect April 1, 1991.

**History:** 1990, Act 348, Eff. Apr. 1, 1991.

## SELLER DISCLOSURE ACT Act 92 of 1993

AN ACT to require certain disclosures in connection with transfers of residential property.

**History:** 1993, Act 92, Eff. Jan. 10, 1994.

*The People of the State of Michigan enact:*

### **565.951 Short title.**

Sec. 1. This act shall be known and may be cited as the “seller disclosure act”.

**History:** 1993, Act 92, Eff. Jan. 10, 1994.

### **565.952 Applicability of seller disclosure requirements.**

Sec. 2. The seller disclosure requirements of sections 4 to 13 apply to the transfer of any interest in real estate consisting of not less than 1 or more than 4 residential dwelling units, whether by sale, exchange, installment land contract, lease with an option to purchase, any other option to purchase, or ground lease coupled with proposed improvements by the purchaser or tenant, or a transfer of stock or an interest in a residential cooperative.

**History:** 1993, Act 92, Eff. Jan. 10, 1994.

### **565.953 Seller disclosure requirements; exceptions.**

Sec. 3. The seller disclosure requirements of sections 4 to 13 do not apply to any of the following:

(a) Transfers pursuant to court order, including, but not limited to, transfers ordered by a probate court in administration of an estate, transfers pursuant to a writ of execution, transfers by any foreclosure sale, transfers by a trustee in bankruptcy, transfers by eminent domain, and transfers resulting from a decree for specific performance.

(b) Transfers to a mortgagee by a mortgagor or successor in interest who is in default, or transfers to a beneficiary of a deed of trust by a trustor or successor in interest who is in default.

(c) Transfers by a sale under a power of sale or any foreclosure sale under a decree of foreclosure after default in an obligation secured by a mortgage or deed of trust or secured by any other instrument containing a power of sale, or transfers by a mortgagee or a beneficiary under a deed of trust who has acquired the real property at a sale conducted pursuant to a power of sale under a mortgage or deed of trust or a sale pursuant to a decree of foreclosure or has acquired the real property by a deed in lieu of foreclosure.

(d) Transfers by a nonoccupant fiduciary in the course of the administration of a decedent's estate, guardianship, conservatorship, or trust.

(e) Transfers from 1 co-tenant to 1 or more other co-tenants.

(f) Transfers made to a spouse, parent, grandparent, child, or grandchild.

(g) Transfers between spouses resulting from a judgment of divorce or a judgment of separate maintenance or from a property settlement agreement incidental to such a judgment.

(h) Transfers or exchanges to or from any governmental entity.

(i) Transfers made by a person licensed under article 24 of Act No. 299 of the Public Acts of 1980, being sections 339.2401 to 339.2412 of the Michigan Compiled Laws, of newly constructed residential property that has not been inhabited.

**History:** 1993, Act 92, Eff. Jan. 10, 1994.

### **565.954 Written statement; delivery; time limits; compliance; terminating purchase agreement within certain time limits; expiration of right to terminate.**

Sec. 4. (1) The transferor of any real property described in section 2 shall deliver to the transferor's agent or to the prospective transferee or the transferee's agent the written statement required by this act. If the written statement is delivered to the transferor's agent, the transferor's agent shall provide a copy to the prospective transferee or his or her agent. A written disclosure statement provided to a transferee's agent shall be considered to have been provided to the transferee. The written statement shall be delivered to the prospective transferee within the following time limits:

(a) In the case of a sale, before the transferor executes a binding purchase agreement with the prospective transferee.

(b) In the case of transfer by an installment sales contract where a binding purchase agreement has not been executed, or in the case of a lease together with an option to purchase or a ground lease coupled with improvements by the tenant, before the transferor executes the installment sales contract with the prospective



transferee.

(2) With respect to any transfer subject to subsection (1), the transferor shall indicate compliance with this act either on the purchase agreement, the installment sales contract, the lease, or any addendum attached to the purchase agreement, contract, or lease, or on a separate document.

(3) Except as provided in subsection (4), if any disclosure or amendment of any disclosure required to be made by this act is delivered after the transferor executes a binding purchase agreement, the prospective transferee may terminate the purchase agreement by delivering written notice of termination to the transferor or the transferor's agent within the following time limits:

(a) Not later than 72 hours after delivery of the disclosure statement to the prospective transferee, if the disclosure statement was delivered to the prospective transferee in person.

(b) Not later than 120 hours after delivery of the disclosure statement to the prospective transferee, if the disclosure statement was delivered to the prospective transferee by registered mail.

(4) A transferee's right to terminate the purchase agreement expires upon the transfer of the subject property by deed or installment sales contract.

**History:** 1993, Act 92, Eff. Jan. 10, 1994.

#### **565.955 Liability for error, inaccuracy, or omission; delivery as compliance with requirements of act; conditions.**

Sec. 5. (1) The transferor or his or her agent is not liable for any error, inaccuracy, or omission in any information delivered pursuant to this act if the error, inaccuracy, or omission was not within the personal knowledge of the transferor, or was based entirely on information provided by public agencies or provided by other persons specified in subsection (3), and ordinary care was exercised in transmitting the information. It is not a violation of this act if the transferor fails to disclose information that could be obtained only through inspection or observation of inaccessible portions of real estate or could be discovered only by a person with expertise in a science or trade beyond the knowledge of the transferor.

(2) The delivery of any information required by this act to be disclosed to a prospective transferee by a public agency or other person specified in subsection (3) shall be considered to comply with the requirements of this act and relieves the transferor of any further duty under this act with respect to that item of information, unless the transferor has knowledge of a known defect or condition that contradicts the information provided by the public agency or the person specified in subsection (3).

(3) The delivery of a report or opinion prepared by a licensed professional engineer, professional surveyor, geologist, structural pest control operator, contractor, or other expert, dealing with matters within the scope of the professional's license or expertise, is sufficient compliance for application of the exemption provided by subsection (1) if the information is provided upon the request of the prospective transferee, unless the transferor has knowledge of a known defect or condition that contradicts the information contained in the report or opinion. In responding to a request by a prospective transferee, an expert may indicate, in writing, an understanding that the information provided will be used in fulfilling the requirements of section 7 and, if so, shall indicate the required disclosures, or parts of disclosures, to which the information being furnished applies. In furnishing the statement, the expert is not responsible for any items of information other than those expressly set forth in the statement.

**History:** 1993, Act 92, Eff. Jan. 10, 1994.

#### **565.956 Disclosures; inaccuracy as result of action, occurrence, or agreement after delivery; unknown or unavailable information; basis.**

Sec. 6. If information disclosed in accordance with this act becomes inaccurate as a result of any action, occurrence, or agreement after the delivery of the required disclosures, the resulting inaccuracy does not constitute a violation of this act. If at the time the disclosures are required to be made, an item of information required to be disclosed under this act is unknown or unavailable to the transferor, the transferor may comply with this act by advising a prospective purchaser of the fact that the information is unknown. The information provided to a prospective purchaser pursuant to this act shall be based upon the best information available and known to the transferor.

**History:** 1993, Act 92, Eff. Jan. 10, 1994.

#### **565.957 Disclosure; form.**

Sec. 7. (1) The disclosures required by this act shall be made on the following form:

##### **SELLER'S DISCLOSURE STATEMENT**

**Property Address:**

\_\_\_\_\_  
 Street \_\_\_\_\_ Michigan  
 \_\_\_\_\_  
 City, Village, or Township

**Purpose of Statement:** This statement is a disclosure of the condition of the property in compliance with the seller disclosure act. This statement is a disclosure of the condition and information concerning the property, known by the seller. Unless otherwise advised, the seller does not possess any expertise in construction, architecture, engineering, or any other specific area related to the construction or condition of the improvements on the property or the land. Also, unless otherwise advised, the seller has not conducted any inspection of generally inaccessible areas such as the foundation or roof. This statement is not a warranty of any kind by the seller or by any agent representing the seller in this transaction, and is not a substitute for any inspections or warranties the buyer may wish to obtain.

**Seller's Disclosure:** The seller discloses the following information with the knowledge that even though this is not a warranty, the seller specifically makes the following representations based on the seller's knowledge at the signing of this document. Upon receiving this statement from the seller, the seller's agent is required to provide a copy to the buyer or the agent of the buyer. The seller authorizes its agent(s) to provide a copy of this statement to any prospective buyer in connection with any actual or anticipated sale of property. The following are representations made solely by the seller and are not the representations of the seller's agent(s), if any. **THIS INFORMATION IS A DISCLOSURE ONLY AND IS NOT INTENDED TO BE A PART OF ANY CONTRACT BETWEEN BUYER AND SELLER.**

**Instructions to the Seller:** (1) Answer ALL questions. (2) Report known conditions affecting the property. (3) Attach additional pages with your signature if additional space is required. (4) Complete this form yourself. (5) If some items do not apply to your property, check NOT AVAILABLE. If you do not know the facts, check UNKNOWN. FAILURE TO PROVIDE A PURCHASER WITH A SIGNED DISCLOSURE STATEMENT WILL ENABLE A PURCHASER TO TERMINATE AN OTHERWISE BINDING PURCHASE AGREEMENT.

**Appliances/Systems/Services:** The items below are in working order (the items below are included in the sale of the property only if the purchase agreement so provides):

	Yes	No	Unknown	Not Available
Range/Oven	_____	_____	_____	_____
Dishwasher	_____	_____	_____	_____
Refrigerator	_____	_____	_____	_____
Hood/fan	_____	_____	_____	_____
Disposal	_____	_____	_____	_____
TV antenna, TV rotor & controls	_____	_____	_____	_____
Electrical system	_____	_____	_____	_____
Garage door opener & remote control	_____	_____	_____	_____
Alarm system	_____	_____	_____	_____
Intercom	_____	_____	_____	_____
Central vacuum	_____	_____	_____	_____
Attic fan	_____	_____	_____	_____
Pool heater, wall liner & equipment	_____	_____	_____	_____
Microwave	_____	_____	_____	_____
Trash compactor	_____	_____	_____	_____
Ceiling fan	_____	_____	_____	_____
Sauna/hot tub	_____	_____	_____	_____
Washer	_____	_____	_____	_____
Dryer	_____	_____	_____	_____
Lawn sprinkler system	_____	_____	_____	_____
Water heater	_____	_____	_____	_____

Plumbing system	_____	_____	_____	_____
Water				
softener/conditioner	_____	_____	_____	_____
Well & pump	_____	_____	_____	_____
Septic tank & drain				
field	_____	_____	_____	_____
Sump pump	_____	_____	_____	_____
City Water System	_____	_____	_____	_____
City Sewer System	_____	_____	_____	_____
Central air				
conditioning	_____	_____	_____	_____
Central heating system	_____	_____	_____	_____
Wall furnace	_____	_____	_____	_____
Humidifier	_____	_____	_____	_____
Electronic air filter	_____	_____	_____	_____
Solar heating system	_____	_____	_____	_____
Fireplace & chimney	_____	_____	_____	_____
Wood burning system	_____	_____	_____	_____

Explanations (attach additional sheets if necessary):

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

UNLESS OTHERWISE AGREED, ALL HOUSEHOLD APPLIANCES ARE SOLD IN WORKING ORDER EXCEPT AS NOTED, WITHOUT WARRANTY BEYOND DATE OF CLOSING.

**Property conditions, improvements & additional information:**

**1. Basement/crawl space:** Has there been evidence of water?

yes\_\_\_\_ no\_\_\_\_

If yes, please explain: \_\_\_\_\_

**2. Insulation:** Describe, if known \_\_\_\_\_

Urea Formaldehyde Foam Insulation (UFFI) is installed?

unknown\_\_\_\_ yes\_\_\_\_ no\_\_\_\_

**3. Roof:** Leaks? yes\_\_\_\_ no\_\_\_\_

Approximate age if known \_\_\_\_\_

**4. Well:** Type of well (depth/diameter, age, and repair history, if known): \_\_\_\_\_

Has the water been tested? yes\_\_\_\_ no\_\_\_\_

If yes, date of last report/results: \_\_\_\_\_

**5. Septic tanks/drain fields:** Condition, if known: \_\_\_\_\_

**6. Heating System:** Type/approximate age: \_\_\_\_\_

**7. Plumbing system:** Type: copper\_\_\_\_ galvanized\_\_\_\_ other\_\_\_\_

Any known problems? \_\_\_\_\_

**8. Electrical system:** Any known problems? \_\_\_\_\_

**9. History of infestation, if any:** (termites, carpenter ants, etc.) \_\_\_\_\_

**10. Environmental Problems:** Are you aware of any substances, materials, or products that may be an environmental hazard such as, but not limited to, asbestos, radon gas, formaldehyde, lead-based paint, fuel or chemical storage tanks and contaminated soil on the property.

unknown\_\_\_\_ yes\_\_\_\_ no\_\_\_\_

If yes, please explain: \_\_\_\_\_

**11. Flood insurance:** Do you have flood insurance on the property? unknown \_\_\_ yes \_\_\_ no \_\_\_

**12. Mineral rights:** Do you own the mineral rights? unknown \_\_\_ yes \_\_\_ no \_\_\_

**Other Items:** Are you aware of any of the following:

1. Features of the property shared in common with the adjoining landowners, such as walls, fences, roads and driveways, or other features whose use or responsibility for maintenance may have an effect on the property?

unknown \_\_\_ yes \_\_\_ no \_\_\_

2. Any encroachments, easements, zoning violations, or nonconforming uses? unknown \_\_\_ yes \_\_\_ no \_\_\_

3. Any "common areas" (facilities like pools, tennis courts, walkways, or other areas co-owned with others), or a homeowners' association that has any authority over the property? unknown \_\_\_ yes \_\_\_ no \_\_\_

4. Structural modifications, alterations, or repairs made without necessary permits or licensed contractors?

unknown \_\_\_ yes \_\_\_ no \_\_\_

5. Settling, flooding, drainage, structural, or grading problems? unknown \_\_\_ yes \_\_\_ no \_\_\_

6. Major damage to the property from fire, wind, floods, or landslides? unknown \_\_\_ yes \_\_\_ no \_\_\_

7. Any underground storage tanks? unknown \_\_\_ yes \_\_\_ no \_\_\_

8. Farm or farm operation in the vicinity; or proximity to a landfill, airport, shooting range, etc.?

unknown \_\_\_ yes \_\_\_ no \_\_\_

9. Any outstanding utility assessments or fees, including any natural gas main extension surcharge?

unknown \_\_\_ yes \_\_\_ no \_\_\_

10. Any outstanding municipal assessments or fees?

unknown \_\_\_ yes \_\_\_ no \_\_\_

11. Any pending litigation that could affect the property or the seller's right to convey the property?

unknown \_\_\_ yes \_\_\_ no \_\_\_

If the answer to any of these questions is yes, please explain.

Attach additional sheets, if necessary: \_\_\_\_\_

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The seller has lived in the residence on the property from \_\_\_\_\_ (date) to \_\_\_\_\_ (date). The seller has owned the property since \_\_\_\_\_ (date). The seller has indicated above the condition of all the items based on information known to the seller. If any changes occur in the structural/mechanical/appliance systems of this property from the date of this form to the date of closing, seller will immediately disclose the changes to buyer. In no event shall the parties hold the broker liable for any representations not directly made by the broker or broker's agent.

Seller certifies that the information in this statement is true and correct to the best of seller's knowledge as of the date of seller's signature.

BUYER SHOULD OBTAIN PROFESSIONAL ADVICE AND INSPECTIONS OF THE PROPERTY TO MORE FULLY DETERMINE THE CONDITION OF THE PROPERTY. THESE INSPECTIONS SHOULD TAKE INDOOR AIR AND WATER QUALITY INTO ACCOUNT, AS WELL AS ANY EVIDENCE OF UNUSUALLY HIGH LEVELS OF POTENTIAL ALLERGENS INCLUDING, BUT NOT LIMITED TO, HOUSEHOLD MOLD, MILDEW AND BACTERIA.

BUYERS ARE ADVISED THAT CERTAIN INFORMATION COMPILED PURSUANT TO THE SEX OFFENDERS REGISTRATION ACT, 1994 PA 295, MCL 28.721 TO 28.732, IS AVAILABLE TO THE PUBLIC. BUYERS SEEKING THAT INFORMATION SHOULD CONTACT THE APPROPRIATE LOCAL LAW ENFORCEMENT AGENCY OR SHERIFF'S DEPARTMENT DIRECTLY.

BUYER IS ADVISED THAT THE STATE EQUALIZED VALUE OF THE PROPERTY, PRINCIPAL RESIDENCE EXEMPTION INFORMATION, AND OTHER REAL PROPERTY TAX INFORMATION IS AVAILABLE FROM THE APPROPRIATE LOCAL ASSESSOR'S OFFICE.

**BUYER SHOULD NOT ASSUME THAT BUYER'S FUTURE TAX BILLS ON THE PROPERTY WILL BE THE SAME AS THE SELLER'S PRESENT TAX BILLS. UNDER MICHIGAN LAW, REAL PROPERTY TAX OBLIGATIONS CAN CHANGE SIGNIFICANTLY WHEN PROPERTY IS TRANSFERRED.**

Seller \_\_\_\_\_  
Seller \_\_\_\_\_

Date \_\_\_\_\_  
Date \_\_\_\_\_

Buyer has read and acknowledges receipt of this statement.

Buyer \_\_\_\_\_ Date \_\_\_\_\_ Time: \_\_\_\_\_  
Buyer \_\_\_\_\_ Date \_\_\_\_\_ Time: \_\_\_\_\_

(2) A form described in subsection (1) printed before January 1, 2006 that was in compliance with this section at that time may be utilized and shall be considered in compliance with this section until April 1, 2006.

**History:** 1993, Act 92, Eff. Jan. 10, 1994;—Am. 1995, Act 106, Eff. Jan. 1, 1996;—Am. 1996, Act 92, Imd. Eff. Feb. 27, 1996;—Am. 2000, Act 12, Imd. Eff. Mar. 8, 2000;—Am. 2000, Act 13, Imd. Eff. Mar. 8, 2000;—Am. 2003, Act 130, Eff. Jan. 1, 2004;—Am. 2005, Act 163, Eff. Jan. 1, 2006.

#### **565.958 Availability of copies.**

Sec. 8. Copies of the form prescribed in section 7 shall be made available to the public by all real estate brokers and real estate salespersons.

**History:** 1993, Act 92, Eff. Jan. 10, 1994.

#### **565.959 Additional disclosures.**

Sec. 9. A city, township, or county may require disclosures in addition to those disclosures required by section 7, and may require disclosures on a different disclosure form in connection with transactions subject to this act.

**History:** 1993, Act 92, Eff. Jan. 10, 1994.

#### **565.960 Disclosure; good faith.**

Sec. 10. Each disclosure required by this act shall be made in good faith. For purposes of this act, "good faith" means honesty in fact in the conduct of the transaction.

**History:** 1993, Act 92, Eff. Jan. 10, 1994.

#### **565.961 Other obligations created by law not limited.**

Sec. 11. The specification of items for disclosure in this act does not limit or abridge any obligation for disclosure created by any other provision of law regarding fraud, misrepresentation, or deceit in transfer transactions.

**History:** 1993, Act 92, Eff. Jan. 10, 1994.

**565.962 Disclosure; amendment.**

Sec. 12. Any disclosure made pursuant to this act may be amended in writing by the transferor, but the amendment is subject to section 4.

**History:** 1993, Act 92, Eff. Jan. 10, 1994.

**565.963 Disclosure; manner of delivery.**

Sec. 13. Delivery of a disclosure statement required by this act shall be by personal delivery, facsimile delivery, or by registered mail to the prospective purchaser. Execution of a facsimile counterpart of the disclosure statement shall be considered to be execution of the original.

**History:** 1993, Act 92, Eff. Jan. 10, 1994.

**565.964 Transfer not invalidated by noncompliance.**

Sec. 14. A transfer subject to this act shall not be invalidated solely because of the failure of any person to comply with a provision of this act.

**History:** 1993, Act 92, Eff. Jan. 10, 1994.

**565.965 Liability of agent.**

Sec. 15. An agent of a transferor shall not be liable for any violation of this act by a transferor unless any agent knowingly acts in concert with a transferor to violate this act.

**History:** 1993, Act 92, Eff. Jan. 10, 1994.

**565.966 Effective date.**

Sec. 16. This act shall take effect upon the expiration of 180 days after the date of its enactment.

**History:** 1993, Act 92, Eff. Jan. 10, 1994.